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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - - - -

Bryan J. Pesta,) Judge
) Dan Aaron
Plaintiff,) Polster
)
vs.)
)
Laura Bloomberg, in her) Case No.
official and individual) 1:23-cv-00546-
capacities; and Harlan M.) DAP
Sands, Benjamin Ward,)
Christopher Mallett, Conor)
McLennan, and Wendy)
Regoeczi, in their)
individual capacities,)
)
Defendants.)

- - - - -

Deposition of:
RUSSELL T. WARNE, Ph.D.
Appearing Remotely from
Muscogee County, Georgia

June 19, 2024
11:03 a.m.

Reporter: Kristin Wegryn, RMR, CRR
Appearing Remotely from
Lorain County, Ohio

Job No. 6763702

<p style="text-align: right;">Page 2</p> <p>1 REMOTE APPEARANCES:</p> <p>2 On behalf of the Plaintiff:</p> <p>3 FREDERICK C. KELLY, ESQ.</p> <p>4 One Harriman Square</p> <p>5 Goshen, New York 10924</p> <p>6 845.294.7945</p> <p>7 fckellylaw@protonmail.com</p> <p>8 On behalf of the Defendants:</p> <p>9 KAREN L. GIFFEN, ESQ.</p> <p>10 KERIN L. KAMINSKI, ESQ.</p> <p>11 Perez & Morris, LLC</p> <p>12 1300 East Ninth Street</p> <p>13 Suite 1600</p> <p>14 Cleveland, Ohio 44114</p> <p>15 216.621.5161</p> <p>16 kgiffen@perez-morris.com</p> <p>17 kkaminski@perez-morris.com</p> <p>18 -----</p> <p>19 ALSO PRESENT:</p> <p>20 Bryan J. Pesta</p>	<p style="text-align: right;">Page 4</p> <p>1 REPORTING REMOTELY FROM LORAIN COUNTY, OHIO</p> <p>2 Wednesday, June 19, 2024, 11:03 a.m.</p> <p>3 -----</p> <p>4 RUSSELL T. WARNE, Ph.D., of lawful age,</p> <p>5 called for examination, being by me first duly</p> <p>6 sworn, as hereinafter certified, deposed and said</p> <p>7 as follows:</p> <p>8 EXAMINATION OF RUSSELL T. WARNE, Ph.D.</p> <p>9 BY MS. GIFFEN:</p> <p>10 Q. Thank you, Dr. Warne. My name is Karen</p> <p>11 Giffen, and I represent various individuals who</p> <p>12 are associated with Cleveland State University in</p> <p>13 connection with litigation involving Dr. Bryan</p> <p>14 Pesta. I say that primarily for the record. I</p> <p>15 am aware that you know that stuff already.</p> <p>16 But I'm Karen Giffen, and we'll be --</p> <p>17 and I'm the one who will be chatting with you</p> <p>18 this morning.</p> <p>19 MR. KELLY: Ms. Giffen, can I interrupt</p> <p>20 you just for one second, and I apologize in</p> <p>21 advance. But there is a statement that</p> <p>22 Mr. Warne -- or Dr. Warne needs to put on the</p> <p>23 record because of his current employment. So if</p> <p>24 after the name and address, if you can let him</p> <p>25 make that statement regarding the opinions being</p>
<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2 EXAMINATION OF RUSSELL T. WARNE, Ph.D.</p> <p>3 Page</p> <p>4 BY MS. GIFFEN 4</p> <p>5 ** EXHIBITS WERE RETAINED BY ATTORNEY GIFFEN **</p> <p>6 EXHIBITS MARKED</p> <p>7 Exhibit 1 Subpoena with respect to 7</p> <p>8 the deposition of</p> <p>9 Russell T. Warne, Ph.D.</p> <p>10 Exhibit 2 Subpoena Mr. Kelly 7</p> <p>11 received on behalf of</p> <p>12 Dr. Warne</p> <p>13 Exhibit 3 Exhibit to the subpoena 7</p> <p>14 that referenced the</p> <p>15 documents asked to be</p> <p>16 provided</p> <p>17 Exhibit 5 Expert report of 10</p> <p>18 Russell T. Warne, Ph.D.</p> <p>19 Exhibit 4 Curriculum Vitae of 11</p> <p>20 Russell T. Warne, Ph.D.</p> <p>21 Exhibit 6 7-1-19 email 81</p> <p>22 Exhibit 7 10-3-19 email 83</p> <p>23 Exhibit 8 November 2019 email string 86</p> <p>24 Exhibit 9 Email correspondence with 88</p> <p>25 Gregory Connor</p> <p>26 Exhibit 10 March 2020 email string 91</p> <p>27 Exhibit 11 Email 93</p> <p>28 Exhibit 12 Email string 97</p> <p>29 -----</p>	<p style="text-align: right;">Page 5</p> <p>1 his own, we'd greatly appreciate it.</p> <p>2 MS. GIFFEN: Sure. No problem.</p> <p>3 Q. Would you like to do that now,</p> <p>4 Dr. Warne?</p> <p>5 A. Sure.</p> <p>6 Q. Go right ahead.</p> <p>7 A. Yes. I want it to be on the record that</p> <p>8 starting in late March in 2024, I began</p> <p>9 employment with the Arm- -- U.S. Army Research</p> <p>10 Institute for the Behavioral and Social Sciences.</p> <p>11 My testimony is my opinions only and do not</p> <p>12 reflect the views of the U.S. Army Institute for</p> <p>13 the Behavioral Social Sciences, the Department of</p> <p>14 the Army, the federal government, or any</p> <p>15 organizations or other employees of, of those</p> <p>16 organizations.</p> <p>17 Q. Understood. Thank you. And we'll talk</p> <p>18 more about that employment a little later on, but</p> <p>19 I understand that you wanted to put that in the</p> <p>20 record. That's understood.</p> <p>21 All right. The first thing I'd like to</p> <p>22 do -- and you're in a place where you can see</p> <p>23 your computer monitor, correct, Dr. Warne?</p> <p>24 A. Yes.</p> <p>25 Q. All right. The first thing I want to do</p>

<p style="text-align: right;">Page 6</p> <p>1 is make sure that we have on the record why we're</p> <p>2 all appearing today. So I want these to be</p> <p>3 marked for purposes of the record.</p> <p>4 MS. GIFFEN: And Kristin, I'll send hard</p> <p>5 copies of this to you later on.</p> <p>6 Q. But the first thing I wanted to do was</p> <p>7 to -- forgive me for a little bit of -- oh, "the</p> <p>8 host has disabled participant screen sharing."</p> <p>9 MS. GIFFEN: Would you allow that,</p> <p>10 Kristin?</p> <p>11 THE REPORTER: Of course. Yeah, that's</p> <p>12 just automatic.</p> <p>13 (Discussion off the record.)</p> <p>14 THE REPORTER: All set.</p> <p>15 MS. GIFFEN: Okay. Thank you.</p> <p>16 BY MS. GIFFEN:</p> <p>17 Q. All right. So what we're now seeing</p> <p>18 on -- can you see this on your computer screen,</p> <p>19 Dr. Warne?</p> <p>20 A. Yes.</p> <p>21 Q. All right. This is the notice of</p> <p>22 deposition in reference to a subpoena duces tecum</p> <p>23 with respect to your deposition.</p> <p>24 Can you confirm that for us?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 8</p> <p>1 subpoena that referenced the documents</p> <p>2 asked to be provided, was marked for</p> <p>3 purposes of identification.)</p> <p>4 MR. KELLY: We don't see anything. We</p> <p>5 don't see anything.</p> <p>6 A. It hasn't, it hasn't changed.</p> <p>7 Q. It hasn't changed?</p> <p>8 A. No.</p> <p>9 MR. KELLY: Let me know if -- there is</p> <p>10 Warne Exhibit Number 1.</p> <p>11 MS. GIFFEN: Okay. Let me take this</p> <p>12 out.</p> <p>13 And now is it there?</p> <p>14 MR. KELLY: Nope. At least I don't see</p> <p>15 it.</p> <p>16 THE WITNESS: No. Nothing's changed on</p> <p>17 the screen.</p> <p>18 MS. GIFFEN: Okay. Let's try this one</p> <p>19 more time. Now it should be all right.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MS. GIFFEN:</p> <p>22 Q. Okay. All right.</p> <p>23 A. I've referenced that document.</p> <p>24 Q. All right. This is the Exhibit 1 to the</p> <p>25 subpoena that requested that you produce certain</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Okay. And this will be marked as</p> <p>2 Exhibit -- Warne Exhibit Number 1.</p> <p>3 (Deposition Exhibit 1, Subpoena with</p> <p>4 respect to the deposition of Russell T.</p> <p>5 Warne, Ph.D., was marked for purposes of</p> <p>6 identification.)</p> <p>7 Q. And now I'd like to for our purposes</p> <p>8 look at two more exhibits. The first is -- this</p> <p>9 is exhibit number -- Warne Exhibit Number 2 that</p> <p>10 we'll mark is the subpoena that you received. I</p> <p>11 understand that, actually, Mr. Kelly received</p> <p>12 this on your behalf for your testimony today,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 (Deposition Exhibit 2, Subpoena</p> <p>16 Mr. Kelly received on behalf of</p> <p>17 Dr. Warne, was marked for purposes of</p> <p>18 identification.)</p> <p>19 Q. Okay. And then finally -- we're just</p> <p>20 going to do this very fast. Finally, is the</p> <p>21 exhibit to the subpoena which referenced the</p> <p>22 documents that you were asked to, to provide in</p> <p>23 connection with your testimony and in connection</p> <p>24 with this matter, correct?</p> <p>25 (Deposition Exhibit 3, Exhibit to the</p>	<p style="text-align: right;">Page 9</p> <p>1 documents in connection with this, correct?</p> <p>2 A. I believe so.</p> <p>3 Q. Okay. All right. With respect to that,</p> <p>4 that, the document request, one of the requests</p> <p>5 was for you to produce whatever documents that</p> <p>6 you reviewed in connection with the creation of</p> <p>7 your report in connection with this matter.</p> <p>8 And the response we received from</p> <p>9 Mr. Kelly in that regard was that there were no</p> <p>10 documents other than those documents previously</p> <p>11 identified in the expert report itself; is that</p> <p>12 correct? You didn't look at anything other than</p> <p>13 what you described specifically in your report;</p> <p>14 is that true?</p> <p>15 A. Yes, that's correct.</p> <p>16 Q. Okay. All right. And I asked for</p> <p>17 Mr. Kelly to alert you that we were going to be</p> <p>18 referring to your CV and to the report a lot.</p> <p>19 And sometimes it's challenging to do that on the</p> <p>20 screen.</p> <p>21 So do you have hard copies of those two</p> <p>22 documents in front of you?</p> <p>23 A. I have electronic copies on a different</p> <p>24 computer that's behind the screen I'm looking at.</p> <p>25 Q. All right.</p>

<p style="text-align: right;">Page 10</p> <p>1 A. So I can refer to them as needed.</p> <p>2 Q. All right. Okay. So but -- so let's</p> <p>3 identify these two documents for the record.</p> <p>4 And, again, I'm going to share my screen.</p> <p>5 And this is the expert report that you</p> <p>6 had submitted in connection with this matter; is</p> <p>7 that right?</p> <p>8 A. Yes. I believe it's dated March 14th.</p> <p>9 Q. Yes.</p> <p>10 MS. GIFFEN: And we'll put that in as</p> <p>11 Warne Exhibit 5 for purposes of the record,</p> <p>12 Kristin.</p> <p>13 (Deposition Exhibit 5, Expert report of</p> <p>14 Russell T. Warne, Ph.D., was marked for</p> <p>15 purposes of identification.)</p> <p>16 Q. All right. And then the other thing --</p> <p>17 and I know this has changed, I believe, so we'll</p> <p>18 look at that, as well, in a minute.</p> <p>19 MS. GIFFEN: Hold on one second, please.</p> <p>20 I've lost my screen. Oh, here it is.</p> <p>21 Q. And what we'll mark for purposes of the</p> <p>22 deposition as Exhibit -- Warne Exhibit 4 is the</p> <p>23 CV that you have previously provided to us in</p> <p>24 this matter. And we'll talk about any</p> <p>25 differences. I am aware that there is an updated</p>	<p style="text-align: right;">Page 12</p> <p>1 All right. I wanted to just get out of</p> <p>2 the way the marking and identification of those</p> <p>3 documents. It can be a little challenging when</p> <p>4 we go through it on Zoom as to -- you know, I'm</p> <p>5 an old-school lawyer, and so I always want to</p> <p>6 have actual paper, things that used to be trees</p> <p>7 at some point in their lives to do. But I'm</p> <p>8 having to get used to the idea that we can't do</p> <p>9 that anymore as much, or at least it's more</p> <p>10 efficient to use them electronically.</p> <p>11 Now, Dr. Warne, as I understand it, what</p> <p>12 we've previously marked as Exhibit 5, which is a</p> <p>13 copy of your report, includes all of the opinions</p> <p>14 that you are prepared to render in this matter;</p> <p>15 is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And if you can just describe for us in a</p> <p>18 general way -- if you can do exact dates, that</p> <p>19 would be great. When were you engaged to provide</p> <p>20 an expert report in this matter?</p> <p>21 A. I believe that Dr. Pesta sent me an</p> <p>22 email asking if I'd be interested in January of</p> <p>23 this year. I don't know the exact date. And</p> <p>24 then probably by February, I had committed to it</p> <p>25 because I would need a couple weeks to produce a</p>
<p style="text-align: right;">Page 11</p> <p>1 CV that we were provided this morning, and I'll</p> <p>2 be frank with you, I have not had time to try to</p> <p>3 discern any differences between the two. But</p> <p>4 we'll mark Exhibit 4 as the CV.</p> <p>5 (Deposition Exhibit 4, Curriculum Vitae</p> <p>6 of Russell T. Warne, Ph.D., was marked</p> <p>7 for purposes of identification.)</p> <p>8 A. What is the last updated date? It</p> <p>9 should be at the bottom of any page.</p> <p>10 Q. Yes.</p> <p>11 A. What version CV is this?</p> <p>12 Q. Do you have that in front of you? Can</p> <p>13 you see the screen?</p> <p>14 A. Yeah, I can.</p> <p>15 Q. Okay.</p> <p>16 A. March 14th.</p> <p>17 Okay. So that CV is accurate as of the</p> <p>18 date of the expert report.</p> <p>19 Q. Okay. Great.</p> <p>20 And then -- and we'll talk about any</p> <p>21 updates that you have for us because we received</p> <p>22 that from Mr. Kelly, as I say, about an hour ago.</p> <p>23 So we'll talk about that. So we'll -- but we'll</p> <p>24 identify this version as Exhibit -- Warne Exhibit</p> <p>25 4.</p>	<p style="text-align: right;">Page 13</p> <p>1 report by March 14th.</p> <p>2 Q. Okay.</p> <p>3 A. So at the beginning of this year.</p> <p>4 Q. All right. And what do you understand</p> <p>5 was your task? What were you supposed to provide</p> <p>6 an opinion about?</p> <p>7 A. I was asked to discuss the context,</p> <p>8 scientific value, and quality of the Lasker,</p> <p>9 et al., article.</p> <p>10 Q. So you said context, scientific value.</p> <p>11 Was there a third thing that I missed?</p> <p>12 A. And quality.</p> <p>13 Q. Okay. And, in that regard, as I</p> <p>14 understand it, you had previously read the Lasker</p> <p>15 paper, correct?</p> <p>16 A. Yes. I read it when it came out.</p> <p>17 Q. Okay. And I think you say in your</p> <p>18 report that you read it again once you were</p> <p>19 engaged to, to provide an expert opinion,</p> <p>20 correct?</p> <p>21 A. Yes, that's correct.</p> <p>22 Q. Okay. And just so we're crystal clear,</p> <p>23 you did not look at any other documents in</p> <p>24 connection with the -- your rendering of your</p> <p>25 expert opinion, true?</p>

<p style="text-align: right;">Page 14</p> <p>1 MR. KELLY: Objection.</p> <p>2 A. That's true.</p> <p>3 MR. KELLY: That mischaracterizes the</p> <p>4 testimony.</p> <p>5 MS. GIFFEN: I'm sorry?</p> <p>6 MR. KELLY: There are numerous documents</p> <p>7 that are cited in the report of Dr. Warne.</p> <p>8 MS. GIFFEN: Oh, I see. Other than</p> <p>9 those that are specifically cited in Dr. Warne's</p> <p>10 report. I'll concede that modification to my</p> <p>11 question.</p> <p>12 Q. Do you agree with that, Dr. Warne?</p> <p>13 A. Yes. Everything I consulted is cited in</p> <p>14 the report.</p> <p>15 Q. Okay. And, as I understand it, you</p> <p>16 wouldn't need -- you would not -- in your view,</p> <p>17 you would not have needed to consult any other</p> <p>18 documents other than those specifically set forth</p> <p>19 in your report to render the opinion that you</p> <p>20 have in this case, true?</p> <p>21 A. I mean, there's a lot of scholarly</p> <p>22 articles that support these same points, and so</p> <p>23 it would be valid to cite other articles at</p> <p>24 certain points. But no, there was nothing where</p> <p>25 I said, oh, I'm going to render an opinion and I</p>	<p style="text-align: right;">Page 16</p> <p>1 A. That's correct.</p> <p>2 Q. And you did not review CSU's research</p> <p>3 misconduct policies or procedures, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And your opinion, given that you have</p> <p>6 not reviewed any of those materials, you don't --</p> <p>7 you are not rendering an opinion with respect to</p> <p>8 the allegations of research of misconduct by</p> <p>9 Dr. Pesta, true?</p> <p>10 A. As I stated in my report, it's about the</p> <p>11 context, scientific value, and quality of the</p> <p>12 article.</p> <p>13 Q. Okay. So that's a "no," I take it?</p> <p>14 You've rendered the opinion that we're going to</p> <p>15 talk about in one minute with respect to those</p> <p>16 issues, the context, scientific value, and</p> <p>17 quality of the report, but you are not rendering</p> <p>18 an opinion with respect to alleged misconduct</p> <p>19 involving Dr. Pesta, correct?</p> <p>20 A. Yes, that's correct.</p> <p>21 Q. Have you ever testified as an expert</p> <p>22 before in any other matter?</p> <p>23 A. No. This is my first time.</p> <p>24 Q. Okay. Have you ever -- and I understand</p> <p>25 that you, that you have offered an expert opinion</p>
<p style="text-align: right;">Page 15</p> <p>1 did not have some sort of scholarly reason to do</p> <p>2 so and then cited that scholarly data or</p> <p>3 information.</p> <p>4 Q. Okay. Am I correct that you did not</p> <p>5 review the academic investigative committee's</p> <p>6 report in connection with Dr. Pesta -- that is to</p> <p>7 say, CSU's investigative committee report --</p> <p>8 correct?</p> <p>9 A. No, I did not review the report.</p> <p>10 Q. Am I correct that you did not review any</p> <p>11 of the correspondence issued by Provost Laura</p> <p>12 Bloomberg in connection with Dr. Pesta?</p> <p>13 A. I did not review any correspondence</p> <p>14 from, from Ms. Bloomberg.</p> <p>15 Q. You did not review the data use</p> <p>16 certificate -- certifications that were created</p> <p>17 in connection with Dr. Pesta's research, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. You did not review the data access</p> <p>20 requests that were made in connection with this</p> <p>21 matter, true?</p> <p>22 A. That's correct.</p> <p>23 Q. You did not review any correspondence</p> <p>24 with NIH by Dr. Pesta or any -- anyone else in</p> <p>25 connection with the Lasker paper; is that true?</p>	<p style="text-align: right;">Page 17</p> <p>1 in the past involving Professor Amy -- I think</p> <p>2 it's Wax; is that right?</p> <p>3 A. Yes, that's correct. I wrote an expert</p> <p>4 opinion just as I wrote an expert opinion in</p> <p>5 Dr. Pesta's case.</p> <p>6 Q. Okay. And just quickly, I understand</p> <p>7 that that was in May of 2023, right?</p> <p>8 A. I don't know the exact date. It is in</p> <p>9 my vitae.</p> <p>10 Q. Yes, that's what I'm using as the date.</p> <p>11 We can look back at it. The date doesn't really</p> <p>12 matter. But it's --</p> <p>13 A. I can see it in my vitae May 2nd, 2023.</p> <p>14 Q. Okay. All right. Excuse me.</p> <p>15 And Professor Wax is a law professor at</p> <p>16 Penn, right?</p> <p>17 A. At University of Pennsylvania, yes.</p> <p>18 Q. And you provided the report in</p> <p>19 connection with the disciplinary proceedings</p> <p>20 involving Professor Wax; is that right?</p> <p>21 A. That's correct.</p> <p>22 Q. Were you deposed in connection with</p> <p>23 that?</p> <p>24 A. No.</p> <p>25 Q. Did you testify at a hearing or testify</p>

<p style="text-align: right;">Page 18</p> <p>1 before any university committee in connection 2 with that matter? 3 A. No. 4 Q. All right. And what was the nature of 5 the issue that you were looking at in connection 6 with Professor Wax? 7 A. Professor Wax was dismissed by -- or she 8 was disciplined by her university in regards to 9 controversies that she had weighed in on, some of 10 which were in a classroom, some of which were 11 outside the classroom. And I was asked by her 12 counsel to provide an expert's point of view 13 about some of these comments as they touched on 14 intelligence research. 15 Q. Okay. So it was opining with respect 16 that to comments that Professor Wax made about 17 the relative intelligence of population 18 subgroups, including African Americans, and you 19 were opining with respect to, what, the validity 20 of those comments? 21 A. I don't remember everything in that 22 expert report, but the purpose of it was to 23 provide context and state whether there was 24 scientific support for these different comments. 25 But I don't remember specifically any</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. The firm name? Do you know the firm 2 name? 3 A. I don't recall his name. 4 Q. Okay. All right. Have you otherwise 5 testified as an expert or rendered an opinion as 6 an expert in any proceeding? 7 And, you know, don't limit it to the 8 kind of expert report you provided in either the 9 Wax case or in this one. Any other expert 10 report? 11 A. No. 12 Q. Have you ever been a defendant or a 13 plaintiff in any lawsuit? 14 A. No. 15 Q. And have you ever testified in any 16 hearing or proceeding other than today? 17 A. No. 18 Q. Okay. All right. Now, I'd like to turn 19 to what we've previously marked as Exhibit 4. 20 And Dr. Warne, Exhibit 4 is the CV that you had 21 as of March 14th, 2024. 22 And where, by the way, you know that 23 there are changes in the CV because of -- because 24 of the new one that you submitted, please let us 25 know. So as we're doing this, if there's</p>
<p style="text-align: right;">Page 19</p> <p>1 comment or any speech from Dr. -- from Professor 2 Wax that, that I was asked to weigh in on. 3 Q. Okay. The procedure there was internal 4 to Penn, right? This was not in a court of law, 5 correct? 6 A. Yes, as far as I understand. And from 7 what I've read in -- and what I remember in media 8 articles, it has not proceeded past internal -- I 9 don't know what the technical term is because I'm 10 not in law. But in internal proceedings. 11 Q. Yeah. 12 It was still within the Penn -- the 13 University of Pennsylvania process with respect 14 to disciplining of faculty members because 15 there's appeals and et cetera, and your report 16 was provided in connection with that internal 17 process; is that right? 18 A. Yes. I do not know if that's still an 19 internal process or even whether still the 20 proceedings are continuing. I haven't had 21 contact with Professor Wax's lawyer in over a 22 year. 23 Q. And who was Professor Wax's lawyer? 24 A. I don't recall the last name. 25 MR. KELLY: Don't guess, then.</p>	<p style="text-align: right;">Page 21</p> <p>1 something different, please tell us, okay? 2 The first question for you, Dr. Warne, 3 is: Do you now live in Georgia? 4 A. Yes. I live in Columbus, Georgia. 5 Technically, it's within the city limits of 6 Columbus, but the post office calls it Fortson. 7 Q. Could you give us your address, please. 8 A. 3920 Essex Heights Court, Fortson, 9 Georgia 31808. 10 Q. Okay. Thank you. 11 And when did you move? Because this CV 12 dated March 14th, 2024, you were I think living 13 in Provo, Utah. When did you move to Georgia? 14 A. See here, the report is dated March 15 14th. Just a few days later, the movers came to 16 pack up our things. I don't remember the exact 17 date we arrived in Georgia, but I started working 18 on -- in Georgia on March 22nd. 19 Q. Okay. All right. So, you know, we 20 won't go through every bit of your CV, and I bet 21 you're happy about that. The -- because it is 22 rather lengthy. But I just want to get a certain 23 sense of what your career has been to date. 24 And so I'm going to make some 25 statements, and you should feel free to disagree</p>

<p style="text-align: right;">Page 22</p> <p>1 with me if I've got it wrong, okay?</p> <p>2 A. That's fine.</p> <p>3 Q. It appears that you graduated from BYU</p> <p>4 in April of 2001, right?</p> <p>5 A. No. That's 2007.</p> <p>6 Q. I'm so sorry. I was looking at 2007 and</p> <p>7 out of my mouth came 2001. 2007.</p> <p>8 And did you move immediately from high</p> <p>9 school into college at BYU?</p> <p>10 A. No. I actually graduated from high</p> <p>11 school a year early at the end of my junior year</p> <p>12 because my parents were moving at the time to</p> <p>13 North Dakota and it just wasn't in my educational</p> <p>14 best interest to have high school there. And</p> <p>15 then later they moved to California where it</p> <p>16 would have been even worse.</p> <p>17 So I graduated from high school a year</p> <p>18 early, in August of 2001. And I worked for a</p> <p>19 short time before starting college at Brigham</p> <p>20 Young University in January of 2002.</p> <p>21 Q. Okay. What were you doing at BYU before</p> <p>22 you started as an active student at BYU?</p> <p>23 A. I started as an active student there. I</p> <p>24 worked just as a teenager working a couple of</p> <p>25 part-time jobs.</p>	<p style="text-align: right;">Page 24</p> <p>1 measurement and statistics.</p> <p>2 Q. And I'd like to turn to your</p> <p>3 professional experience, and we're going to try</p> <p>4 to work backwards here first.</p> <p>5 It appears to me that you were in the</p> <p>6 vein of a research assistant or graduate</p> <p>7 assistant at both BYU and Texas A&M for the</p> <p>8 period of 2005 through 2011, and that that was</p> <p>9 your professional experience. Granted, you were</p> <p>10 also in school during that time frame, right?</p> <p>11 A. Yes. I was a student employee --</p> <p>12 Q. Okay.</p> <p>13 A. -- during that time frame.</p> <p>14 Q. All right. Then, in 2011, you became an</p> <p>15 assistant professor at Utah Valley University,</p> <p>16 correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And where is Utah Valley University?</p> <p>19 A. It is in Orem, Utah.</p> <p>20 Q. And you remained there as an assistant</p> <p>21 professor for six years, correct?</p> <p>22 A. Yes. At that point, I gained tenure.</p> <p>23 Q. Yeah.</p> <p>24 And so, in 2017, you gained tenure and</p> <p>25 became -- and were promoted to an associate</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Got it.</p> <p>2 No professional experience? That's just</p> <p>3 what I'm trying to get to, okay?</p> <p>4 A. Before I started as a freshman at BYU in</p> <p>5 January of 2002, no, I had no non-menial</p> <p>6 professional work.</p> <p>7 Q. Okay. And I noticed you said your minor</p> <p>8 was in theater studies, which I guess explains</p> <p>9 you're interested -- your interest in the Tonys,</p> <p>10 which I found very informative in your social</p> <p>11 media sites and reviews of various Broadway</p> <p>12 productions.</p> <p>13 And that you continue to have that</p> <p>14 interest, right?</p> <p>15 A. Yes. I've been a theater critic for 17</p> <p>16 years, and so yes, I continue to have that</p> <p>17 interest.</p> <p>18 Q. All right. So between your graduation</p> <p>19 from BYU in 2007, you then went to Texas A&M and</p> <p>20 I guess four years later came out with a Ph.D.,</p> <p>21 right?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. And your Ph.D. is in educational</p> <p>24 psychology, true?</p> <p>25 A. Yes, with an emphasis in research</p>	<p style="text-align: right;">Page 25</p> <p>1 professor of psychology, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And you were at Utah Valley for</p> <p>4 five years as a tenured associate professor,</p> <p>5 correct?</p> <p>6 A. Four and a half. I left in February of</p> <p>7 2022.</p> <p>8 Q. Okay. Why did you leave?</p> <p>9 A. I received a job offer from Meta and it</p> <p>10 would be double the pay with fewer hours.</p> <p>11 Q. Okay. And were you able to do that job</p> <p>12 from Utah where you were living?</p> <p>13 A. Yes. That was one of the reasons I took</p> <p>14 it. I had competing job offers, and Meta allowed</p> <p>15 me to not move my family while also paying me</p> <p>16 double.</p> <p>17 Q. Okay. And you've, you've used the word</p> <p>18 several times now "Meta." What is Meta, for the</p> <p>19 record? Not that we all don't have our own ideas</p> <p>20 of what Meta is, but tell us what Meta is.</p> <p>21 A. Meta's the company that formerly was</p> <p>22 known as Facebook.</p> <p>23 Q. Okay. And you worked there from</p> <p>24 February of 2020 until when? Excuse me. 2022</p> <p>25 until when?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. January 2023.</p> <p>2 Q. All right. And why did you leave Meta?</p> <p>3 A. The company was facing an adverse</p> <p>4 economic climate and they laid off a quarter of</p> <p>5 their workforce. And, generally, it was last in,</p> <p>6 first out, so I was laid off at that point.</p> <p>7 Q. Okay. And then the -- I'll just -- you</p> <p>8 know, what I prefer now is for you to describe</p> <p>9 after you were laid off from Meta in January</p> <p>10 2023, what happened to your career thereafter?</p> <p>11 A. I was looking for full-time employment.</p> <p>12 I eventually found it and started working at the</p> <p>13 U.S. Army Research Institute, as I said before,</p> <p>14 in March of 2024.</p> <p>15 Q. What are you doing for the U.S. Army</p> <p>16 Research?</p> <p>17 A. I work for their Fort Moore unit, which</p> <p>18 is the unit in charge of research related to</p> <p>19 training soldiers in the Army.</p> <p>20 Q. All right. In between then -- I didn't</p> <p>21 write it down. In between January of 2023 and</p> <p>22 March of 2024, what were you doing?</p> <p>23 A. I was doing freelance work looking for</p> <p>24 employment, taking care of my children.</p> <p>25 Q. Okay. On your CV, you described this</p>	<p style="text-align: right;">Page 28</p> <p>1 journal articles. And what I haven't been able</p> <p>2 to do is to examine that, if that has changed in</p> <p>3 your new CV.</p> <p>4 Did it change?</p> <p>5 A. Yes. There are some changes. Just</p> <p>6 yesterday, I had a manuscript accepted by the</p> <p>7 Journal PLOS One.</p> <p>8 Q. Okay. And I see that is, that is you</p> <p>9 and RAA Larson protocol for a meta-analysis of</p> <p>10 stereotype threat in African Americans, PLOS One?</p> <p>11 Is that what you're referring to?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Has that yet been published, or</p> <p>14 is this in preprint?</p> <p>15 A. It's, it's not in preprint form. It's</p> <p>16 going to be open access, and so there's no need</p> <p>17 to --</p> <p>18 Q. I see.</p> <p>19 A. -- have a free available version.</p> <p>20 Q. Uh-huh.</p> <p>21 A. As I said, it was accepted yesterday, so</p> <p>22 it hasn't made it to the point where the</p> <p>23 publisher has published it.</p> <p>24 Q. All right. Any other changes to your CV</p> <p>25 in the section Peer-Reviewed Journal Articles</p>
<p style="text-align: right;">Page 27</p> <p>1 period as including independent researcher. Is</p> <p>2 that what you mean by "freelance"?</p> <p>3 A. Yes.</p> <p>4 Q. And you also have down RiOT Labs. What</p> <p>5 is RiOT Labs?</p> <p>6 A. RiOT Labs is an organization that formed</p> <p>7 at roughly the new year. It's a couple of people</p> <p>8 who have put up some capital to create an online</p> <p>9 intelligence test that's scientifically reputable</p> <p>10 in which I'm a scientist for that and I'm doing</p> <p>11 that in my spare time while also working full</p> <p>12 time.</p> <p>13 Q. Okay. So that's continuing? That</p> <p>14 hasn't ended?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And where you're able to do</p> <p>17 research projects and publications, you may do</p> <p>18 that as -- because the next thing we're going to</p> <p>19 talk about is your publications, and it seems</p> <p>20 that during that period you also did some</p> <p>21 publishing?</p> <p>22 A. A little bit, yes.</p> <p>23 Q. Okay. So on pages 2 through I think 32</p> <p>24 of your CV, as represented in Warne Exhibit 4,</p> <p>25 you describe your publications in peer-reviewed</p>	<p style="text-align: right;">Page 29</p> <p>1 other than the addition of the PLOS One article</p> <p>2 you just described?</p> <p>3 A. No.</p> <p>4 Q. Okay. And, you know, I am not a</p> <p>5 scientist, which is obvious to you, I'm sure</p> <p>6 already, Dr. Warne, in our conversation, but if I</p> <p>7 review those many pages of your CV with respect</p> <p>8 to your publications, it appears to me that most</p> <p>9 of your publications, most of your research has</p> <p>10 been in the areas of giftedness, intelligence,</p> <p>11 analysis of psychometric data relating to</p> <p>12 intelligence, and you have a particular interest</p> <p>13 in a scientist named Termain [phonetic].</p> <p>14 Do you -- will you agree with that?</p> <p>15 Have I shorted you on any specific areas, or does</p> <p>16 that -- is that a good represent- -- summary of</p> <p>17 where your research is?</p> <p>18 A. I believe the scientist you're referring</p> <p>19 to is Lewis Terman.</p> <p>20 Q. I'm sorry. See there? I mispronounced</p> <p>21 it. Terman. Okay.</p> <p>22 A. Yeah. I don't know how much I have a</p> <p>23 particular interest in him, but I have, I have</p> <p>24 published an article about his work. I think</p> <p>25 it's historically important.</p>

<p style="text-align: right;">Page 30</p> <p>1 But other, other than that, yes, you can</p> <p>2 classify the majority of my research as being</p> <p>3 related to testing. I would not limit that to</p> <p>4 intelligence test. I'm also interested in</p> <p>5 academic achievement, aptitude and other, other</p> <p>6 types of tests, but also intelligence research</p> <p>7 and, yes, giftedness and gifted education.</p> <p>8 Q. All right. And your -- and several of</p> <p>9 your papers have related to the concept of</p> <p>10 attempting to -- excuse me. I apologize for</p> <p>11 that -- attempting to analyze the relatedness of</p> <p>12 ancestry and intelligence. Would you agree with</p> <p>13 that?</p> <p>14 A. Some have touched on that.</p> <p>15 Q. Okay.</p> <p>16 A. That's a very minor component of my</p> <p>17 output.</p> <p>18 Q. Okay. If you look at page 9 of Exhibit</p> <p>19 4, which is your CV. Tell me when you're there.</p> <p>20 You're there?</p> <p>21 A. I am, yes.</p> <p>22 Q. Under Scholarly Book Chapters, the very</p> <p>23 first entry is, is it -- am I understanding that</p> <p>24 this is a chapter in a book? Is that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 would give permission for it to be included. I</p> <p>2 did.</p> <p>3 I don't know what other work the editors</p> <p>4 had to do to get legal permission to publish, but</p> <p>5 they did ask me whether it could be included, and</p> <p>6 I said yes.</p> <p>7 Q. Okay.</p> <p>8 A. That's as far as my knowledge of the</p> <p>9 process went. I've never edited a book.</p> <p>10 Q. Okay. Did you communicate with John</p> <p>11 Fuerst in connection with that?</p> <p>12 A. I don't remember which coauth- -- which</p> <p>13 coeditor I communicated with.</p> <p>14 Q. Let's see. Let's go to page 10 of your</p> <p>15 CV in Exhibit 4, if you would, please. Tell me</p> <p>16 when you're there, please.</p> <p>17 A. I'm there.</p> <p>18 Q. Okay. Are there any changes to that</p> <p>19 section?</p> <p>20 A. Yes. Under the section of Non-Peer</p> <p>21 Reviewed Commentaries in Scholarly Journal</p> <p>22 Articles, there are two additions.</p> <p>23 Q. Okay. What are they?</p> <p>24 A. One is a commentary that I coauthored</p> <p>25 with Dr. Fuerst that has appeared on a website</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Okay. And that the chapter is a reprint</p> <p>2 of an article that was published in Mankind</p> <p>3 Quarterly in 2020; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. And if we look back at that, at page 4</p> <p>6 of your CV, and there is a 2020 article from</p> <p>7 Mankind Quarterly. Is that the article to which</p> <p>8 you refer?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And you were the sole author on</p> <p>11 that work, correct?</p> <p>12 A. Yes.</p> <p>13 Q. The editors of the book were, were whom,</p> <p>14 however, with respect to the book chapter that</p> <p>15 you referred to on page 9 of your CV?</p> <p>16 A. Connor, who I believe his first name is</p> <p>17 Gregory, although I'm not 100 percent sure, and</p> <p>18 John Fuerst.</p> <p>19 Q. And how is it that your previously</p> <p>20 published 2020 paper became part of a book that</p> <p>21 was edited by those individuals? How did that</p> <p>22 happen?</p> <p>23 A. What happens in these cases is the</p> <p>24 editors found the article worthy of inclusion.</p> <p>25 They did ask me to sign a document whether I</p>	<p style="text-align: right;">Page 33</p> <p>1 called Qeios. I don't know how it's pronounced.</p> <p>2 Q. Okay.</p> <p>3 A. A 500-word response to an article in</p> <p>4 another journal.</p> <p>5 Q. It's entitled -- is it entitled When</p> <p>6 Heritability Within Groups is Informative About</p> <p>7 Differences Among Groups, a Comment of Schraiber</p> <p>8 and Edge 2024? Is that the paper you're</p> <p>9 referring to?</p> <p>10 A. It's the paper I'm referring to. The</p> <p>11 subtitle is A Comment on Schraiber and Edge 2024.</p> <p>12 Q. I got it.</p> <p>13 Now, I'm looking now at your</p> <p>14 supplemental CV that we received this morning,</p> <p>15 and I didn't see a reference to that comment. Is</p> <p>16 it there somewhere?</p> <p>17 A. It's on page 9.</p> <p>18 Q. On page 9. Oh, there it is. I see it.</p> <p>19 And when was that published in Qeios --</p> <p>20 or let's just -- Q-E-I-O-S.</p> <p>21 A. I don't know the exact date, but it's</p> <p>22 been within the past three months.</p> <p>23 Q. Okay. And you communicated with John</p> <p>24 Fuerst with respect to that publication?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. And how did you do that?</p> <p>2 A. Via email.</p> <p>3 Q. What was the nature of Schraiber and</p> <p>4 Edge's work upon which you were commenting?</p> <p>5 A. That's an article published in the</p> <p>6 proceedings of the National Academy of Sciences,</p> <p>7 if I recall the journal correctly. And it's a</p> <p>8 statistical argument about what we call a</p> <p>9 De Vries equation, which is an equation that</p> <p>10 discusses the relationship between -- within</p> <p>11 group heritability and between group heritability</p> <p>12 for any trait. And Schraiber and Edge said that</p> <p>13 this equation says nothing about the heritability</p> <p>14 between groups for a trait because it does break</p> <p>15 down in certain circumstances.</p> <p>16 And Dr. Fuerst and I replied saying,</p> <p>17 yes, it does break down certain circumstances,</p> <p>18 but some of their conceptual understandings of</p> <p>19 the equation are not, are not correct. And while</p> <p>20 it does break down, it does not do so under any</p> <p>21 realistic circumstances in humans.</p> <p>22 Q. And how did you and Dr. Fuerst come to</p> <p>23 engage in producing that publication?</p> <p>24 A. He approached me to ask me to coauthor.</p> <p>25 Q. Was he -- what was it about you that</p>	<p style="text-align: right;">Page 36</p> <p>1 financial awards that you received, you have</p> <p>2 not -- although you have tried, you have not</p> <p>3 received substantial research grants or financial</p> <p>4 awards from either the government or very large</p> <p>5 institutions; would you agree with that</p> <p>6 statement?</p> <p>7 A. I've received internal research grants</p> <p>8 from Utah Valley University. It's a large</p> <p>9 institution. But no, as far as do -- have I</p> <p>10 received large financial awards from my research,</p> <p>11 no, not from any organization.</p> <p>12 THE REPORTER: You broke up a little</p> <p>13 bit. Utah what university?</p> <p>14 THE WITNESS: Valley.</p> <p>15 THE REPORTER: Thank you.</p> <p>16 MS. GIFFEN: You did -- are you okay,</p> <p>17 Kristin? Was that enough for you?</p> <p>18 THE REPORTER: Yes.</p> <p>19 Q. You did, you did seek from the --</p> <p>20 several large grants from the U.S. Department of</p> <p>21 Education I think a couple of times, but you were</p> <p>22 not successful in those, correct?</p> <p>23 A. Correct.</p> <p>24 Q. All right. Have you done -- all right.</p> <p>25 Before we go there, go to page 29 of your CV,</p>
<p style="text-align: right;">Page 35</p> <p>1 would cause him to approach you? Was he familiar</p> <p>2 with your work? What do you know about that?</p> <p>3 A. I don't know all of his motivations</p> <p>4 because I'm not a mind reader, but he did say</p> <p>5 that it was because he respected my work, he knew</p> <p>6 that I would be helpful in refining his ideas and</p> <p>7 presentation. There may have been other reasons,</p> <p>8 but either I'm not aware of them or don't recall</p> <p>9 them.</p> <p>10 Q. All right. Now, if you would please</p> <p>11 flip over to page 25 of your CV, Exhibit 4. Tell</p> <p>12 me when you're there, please.</p> <p>13 A. I'm there.</p> <p>14 Q. And I'd like to start with research</p> <p>15 grants and financial awards. Do you see that</p> <p>16 section?</p> <p>17 A. Yes.</p> <p>18 Q. What's the Human Diversity Foundation?</p> <p>19 A. That's a group that's newly formed. I</p> <p>20 don't know all the details about it, but they</p> <p>21 fund research into human variability.</p> <p>22 Q. Who did you communicate with in</p> <p>23 connection with that?</p> <p>24 A. With Emil Kirkegaard.</p> <p>25 Q. I also note that the research grants and</p>	<p style="text-align: right;">Page 37</p> <p>1 please. Are you there?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And as I understand the Service</p> <p>4 section you have described for us, the -- your</p> <p>5 participation at Utah Valley University, the</p> <p>6 committee work that you did on behalf of the</p> <p>7 university; is that right?</p> <p>8 A. Correct.</p> <p>9 Q. Are there any changes in this section in</p> <p>10 the new CV that you provided?</p> <p>11 A. No. I left Utah Valley University in</p> <p>12 2022, so there is no new service to that</p> <p>13 organization.</p> <p>14 Q. Okay. You did not, you did not then</p> <p>15 serve on any faculty committee or administrative</p> <p>16 committee relating to research misconduct while</p> <p>17 you were at Utah Valley, did you?</p> <p>18 A. No.</p> <p>19 Q. There's no reference here to serving on</p> <p>20 Utah Valley University's IRB; is that -- you did</p> <p>21 not serve on an IRB while you were there?</p> <p>22 A. That's correct.</p> <p>23 Q. Did you serve in any other way at Utah</p> <p>24 Valley University in attempting to oversee</p> <p>25 research of the faculty members of Utah Valley</p>

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<p>1 University?</p> <p>2 A. No.</p> <p>3 Q. And I've said this with respect to Utah</p> <p>4 Valley University, but I guess the same questions</p> <p>5 would apply to Texas A&M. But I believe, in that</p> <p>6 context, you were not on the faculty; is that</p> <p>7 right?</p> <p>8 A. I was a visiting assistant professor for</p> <p>9 the summer of 2011 --</p> <p>10 Q. Uh-huh.</p> <p>11 A. -- but I did not serve in any service</p> <p>12 capacity at Texas A&M.</p> <p>13 Q. Okay.</p> <p>14 A. I should also say, while I was a</p> <p>15 graduate student, I was an instructor of record</p> <p>16 for a couple of classes. But, again, that</p> <p>17 entailed no service obligations.</p> <p>18 Q. Understood. Understood.</p> <p>19 Is that, is that called an adjunct</p> <p>20 faculty role?</p> <p>21 A. My, my appointment was -- my title was</p> <p>22 instructor, and you can see that on page 2 of the</p> <p>23 vitae.</p> <p>24 Q. I've got it.</p> <p>25 All right. In connection with your</p>	<p>1 data by doing human subjects research. I've done</p> <p>2 all of those.</p> <p>3 Q. And in that research that you have</p> <p>4 performed, have you obtained access to any</p> <p>5 controlled AXI datasets that is better maintained</p> <p>6 by NIH?</p> <p>7 A. I have not had controlled access to data</p> <p>8 from NIH for any of my published scholarly work.</p> <p>9 Q. But you've attempted to get it, right?</p> <p>10 A. That's correct.</p> <p>11 Q. When did you do that?</p> <p>12 A. I don't recall exactly. I would have to</p> <p>13 say roughly 2018.</p> <p>14 Q. And what data were you seeking?</p> <p>15 A. I don't recall the exact dataset, but it</p> <p>16 was with the dbGaP data. That's all, that's all</p> <p>17 I can recall about what data it was.</p> <p>18 Q. Was your request for that dataset not --</p> <p>19 what did NIH do with it? Was it approved? Not</p> <p>20 approved? What happened?</p> <p>21 A. It was approved.</p> <p>22 Q. And then what happened?</p> <p>23 A. I did gain access to the data. I recall</p> <p>24 opening the data file and quickly realizing that</p> <p>25 genetic data is a very different format and --</p>
Page 39	Page 41
<p>1 research that you have done during your career,</p> <p>2 how much of it has involved human subjects?</p> <p>3 A. If you're talking about my scholarly</p> <p>4 output, some of it's theoretical. I do not know</p> <p>5 the percentage of my work that is theoretical or</p> <p>6 historical versus human subjects.</p> <p>7 Q. Describe what you mean. How do you</p> <p>8 differentiate those two things?</p> <p>9 A. To me, "human subjects" means collecting</p> <p>10 data on people, collecting new data; whereas</p> <p>11 theoretical work is things like literature</p> <p>12 reviews where you're trying to build theory and</p> <p>13 advance understanding.</p> <p>14 There's also things like secondary data</p> <p>15 analysis that is not considered human subjects,</p> <p>16 at least at Utah Valley University, and other</p> <p>17 things like that. So yeah.</p> <p>18 Q. And so but have you done both? I'm not</p> <p>19 sure I understand your answer. You've done both</p> <p>20 but --</p> <p>21 A. Yes.</p> <p>22 Q. -- you can't quantify how much you did</p> <p>23 of either?</p> <p>24 A. Yes. I've done theoretical work, I've</p> <p>25 analyzed archival data, and I've collected new</p>	<p>1 from the social science data that I'm used to</p> <p>2 analyzing, and so it never proceeded beyond that</p> <p>3 because I realized I didn't have the skills to</p> <p>4 analyze it.</p> <p>5 Q. Okay. So, in other words, you didn't do</p> <p>6 anything with the data?</p> <p>7 A. Yes. And then I don't remember whether</p> <p>8 the data access agreement expired on its own or</p> <p>9 whether I ended the, the data access agreement</p> <p>10 with NIH, but it ended and I haven't had access</p> <p>11 to that data in years.</p> <p>12 Q. Uh-huh.</p> <p>13 A. I've opened it up maybe twice at the</p> <p>14 most.</p> <p>15 Q. And what was -- so you filled out a data</p> <p>16 access request, though, did you not?</p> <p>17 A. Yes.</p> <p>18 Q. And what did you say was the purpose for</p> <p>19 your attempting to obtain that information?</p> <p>20 A. I don't recall. It would have been --</p> <p>21 it would have been trying to identify, you know,</p> <p>22 similar to the mixture studies, relationships</p> <p>23 between genetic frequency and psychological</p> <p>24 phenotypes. But you're talking about a defunct</p> <p>25 project from several years ago. That's all I can</p>

<p style="text-align: right;">Page 42</p> <p>1 remember.</p> <p>2 Q. So you did not do the admixture study,</p> <p>3 then, with regard to that data?</p> <p>4 A. No.</p> <p>5 Q. Did you request at any other time -- is</p> <p>6 that the only time that you've made a request for</p> <p>7 controlled access data?</p> <p>8 A. Yes.</p> <p>9 Q. Were you at Utah Valley at that time?</p> <p>10 A. Yes.</p> <p>11 Q. All right. But you've otherwise, in</p> <p>12 your research, done admixture analysis involving</p> <p>13 other datasets, right?</p> <p>14 A. Yes. I've published one admixture</p> <p>15 study.</p> <p>16 Q. Okay. And when was that?</p> <p>17 A. That was the Mankind Quarterly study</p> <p>18 referred to, the one published in 2020.</p> <p>19 Q. Okay. And that was two years before you</p> <p>20 left Utah Valley, right?</p> <p>21 A. About, yeah.</p> <p>22 Q. What was the nature of that dataset?</p> <p>23 A. It was data that I had collected via</p> <p>24 Qualtrics from people who had taken commercial</p> <p>25 ancestry tests, genetic tests, and then I also</p>	<p style="text-align: right;">Page 44</p> <p>1 A. No.</p> <p>2 Q. How about Wendy Regoeczi?</p> <p>3 A. No.</p> <p>4 Q. Conor McLennan?</p> <p>5 A. No.</p> <p>6 Q. Chris Mallett?</p> <p>7 A. No.</p> <p>8 Q. Harlan M. Sands?</p> <p>9 A. No.</p> <p>10 Q. Andrew Resnick?</p> <p>11 A. No.</p> <p>12 Q. Robert Ingersoll?</p> <p>13 A. No.</p> <p>14 Q. Steven Kent?</p> <p>15 A. No.</p> <p>16 Q. How about Ben Ward?</p> <p>17 A. No.</p> <p>18 Q. And so I take it, because you don't know</p> <p>19 of those individuals, you don't have an opinion</p> <p>20 with respect to them, their reputation,</p> <p>21 et cetera, agreed?</p> <p>22 MR. KELLY: Object to the form of the</p> <p>23 question.</p> <p>24 You can answer, Dr. Warne.</p> <p>25 A. I have no basis by which to judge any of</p>
<p style="text-align: right;">Page 43</p> <p>1 had them complete a short online intelligence</p> <p>2 test, and then I found the relationship between</p> <p>3 those, those variables. So I collected that data</p> <p>4 myself.</p> <p>5 Q. All right. So you -- this would, this</p> <p>6 would fall under the category of human subjects</p> <p>7 research, right?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. And, in so doing, I assume you</p> <p>10 had each of those human subjects consent to their</p> <p>11 participation in the study, et cetera, right?</p> <p>12 A. That's correct.</p> <p>13 Q. And you understand that that's because</p> <p>14 that's your obligation as a researcher, to inform</p> <p>15 those human subjects of what's going to happen</p> <p>16 with their, their information, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. I assume, Dr. Warne, that you have never</p> <p>19 worked for Cleveland State University, correct?</p> <p>20 A. That's correct.</p> <p>21 Q. You never taught there and didn't go to</p> <p>22 school there, right?</p> <p>23 A. That's correct.</p> <p>24 Q. Do you know Laura Bloomberg or have any</p> <p>25 prior knowledge of her?</p>	<p style="text-align: right;">Page 45</p> <p>1 these people.</p> <p>2 Q. Did you ever have any dealings with</p> <p>3 anyone from the Office of Research at Cleveland</p> <p>4 State University?</p> <p>5 A. No.</p> <p>6 Q. I'd like to talk with you now,</p> <p>7 Dr. Warne -- and we're going to get into your</p> <p>8 report. I'd like to have a better understanding</p> <p>9 of what we mean by the scientific method and the</p> <p>10 peer review process. And, again, remember, I'm</p> <p>11 not a scientist.</p> <p>12 Would you agree with me, however, that</p> <p>13 in our western culture, we've made a</p> <p>14 determination that the scientific method, coupled</p> <p>15 with the peer review process, is the best way to</p> <p>16 get to the best science?</p> <p>17 Would you agree, first, with that</p> <p>18 statement?</p> <p>19 MR. KELLY: Object to the form of the</p> <p>20 question.</p> <p>21 Go ahead and answer.</p> <p>22 A. It's a double-barreled question you're</p> <p>23 asking.</p> <p>24 Q. If you need to break it down, feel free</p> <p>25 to do so.</p>

<p style="text-align: right;">Page 46</p> <p>1 A. Yes.</p> <p>2 There is not one scientific method.</p> <p>3 There are many methods of engaging in science,</p> <p>4 and many disciplines, and so that makes it hard</p> <p>5 to say is the scientific method best for</p> <p>6 anything. There are multiple scientific methods.</p> <p>7 And then peer review has not</p> <p>8 historically been part of science. It's a mid-</p> <p>9 to late-twentieth century invention. And there</p> <p>10 are legitimate arguments in the scientific</p> <p>11 community about its relative value.</p> <p>12 Q. So but -- all right.</p> <p>13 First, were you finished? I don't mean</p> <p>14 to cut you off.</p> <p>15 A. No. I'm finished.</p> <p>16 Q. So let's break it up, then, and we'll --</p> <p>17 I'll break it up for you and ask questions just</p> <p>18 about the scientific method and then about the</p> <p>19 peer review process.</p> <p>20 So with regard to the scientific method,</p> <p>21 as a nonscientist, as I understand, as a general</p> <p>22 matter, whatever methodology is employed, you</p> <p>23 start with a question, you develop a hypothesis</p> <p>24 based on what your understanding of what the</p> <p>25 science has been with respect to that issue in</p>	<p style="text-align: right;">Page 48</p> <p>1 a body of literature that results of scientists</p> <p>2 attempting to test the validity of all of those</p> <p>3 hypotheses.</p> <p>4 Would you agree with that statement?</p> <p>5 A. That's generally correct.</p> <p>6 Q. Okay. And the idea here is, as</p> <p>7 scientists who disagree with one another</p> <p>8 potentially -- sometimes they agree, but often</p> <p>9 they disagree. As they disagree with one</p> <p>10 another, we will get closer to a more correct</p> <p>11 answer to whatever the original question was than</p> <p>12 if we did it individually, if we did not engage</p> <p>13 in that vigorous scientific debate.</p> <p>14 Do you agree with that?</p> <p>15 A. Yes.</p> <p>16 Q. And so, as a consequence, virtually all</p> <p>17 scientists are involved in attempting to test the</p> <p>18 validity of what one another does, agreed?</p> <p>19 MR. KELLY: Object to the form of the</p> <p>20 question.</p> <p>21 Go ahead and answer.</p> <p>22 A. I would say not necessarily because</p> <p>23 there are some people who are pure theorists and</p> <p>24 there are some disciplines where there is not</p> <p>25 that rigorous debate because of things like</p>
<p style="text-align: right;">Page 47</p> <p>1 the past, then you either do new tests with</p> <p>2 experiment, new testing with -- through</p> <p>3 experimentation or you analyze other data. You</p> <p>4 then analyze all of that and then you report the</p> <p>5 conclusions.</p> <p>6 Do you have any objection to what I have</p> <p>7 very broadly described as the scientific method</p> <p>8 in that statement?</p> <p>9 A. I would say that not all scientists do</p> <p>10 experiments. Some collect their data through</p> <p>11 other means.</p> <p>12 Q. All right. But they are, they are doing</p> <p>13 an -- however it is they acquire the data,</p> <p>14 they're then doing an analysis on it, right?</p> <p>15 A. Correct.</p> <p>16 Q. All right. And as I understand</p> <p>17 what's -- and this -- I note your comment with</p> <p>18 respect to the peer review is a more recent</p> <p>19 phenomenon, but the idea throughout -- for the</p> <p>20 last several hundred years is, once you report</p> <p>21 your results from your analysis, there is then an</p> <p>22 open invitation to all other science --</p> <p>23 scientists to examine that, test it, counter it,</p> <p>24 do their -- attempt to repeat the experiment or</p> <p>25 attempt to repeat the analysis, and then there is</p>	<p style="text-align: right;">Page 49</p> <p>1 ideological conformity. So I would not say</p> <p>2 virtually all scientists.</p> <p>3 Q. Even theorists, though, even if they're</p> <p>4 not analyzing a dataset, theorists are arguing</p> <p>5 with one another about the particular approach</p> <p>6 of -- and the merits of individual theories,</p> <p>7 aren't they? Isn't that the point?</p> <p>8 A. Yes. Theorists discuss and debate</p> <p>9 theories, but from what -- the understanding I</p> <p>10 had of your question is whether scientists try</p> <p>11 to -- where virtually all scientists try to</p> <p>12 replicate one another's work, and that's not</p> <p>13 always true. And there is not always debate,</p> <p>14 like I said, amongst some -- in some fields or on</p> <p>15 some topics.</p> <p>16 Q. Okay. But even excluding those topics</p> <p>17 that you want to exclude from this, in all other</p> <p>18 topics, then, the point is to have this vigorous</p> <p>19 debate to invite scientists to debate with one</p> <p>20 another about how close each has gotten to the</p> <p>21 truth.</p> <p>22 And I'm putting -- if I -- the record</p> <p>23 won't show my air quotes around the truth, but</p> <p>24 I'll do that.</p> <p>25 Do you agree with that statement?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. Generally, yes.</p> <p>2 Q. Okay. So I'm correct, am I not, then,</p> <p>3 that the process of being a scientist in academia</p> <p>4 today is, in fact, the prompt -- the -- you are</p> <p>5 in it to engage in debate and invited to debate</p> <p>6 with other scientists, many of whom may not agree</p> <p>7 with you, agreed?</p> <p>8 A. That's correct.</p> <p>9 Q. All right. So now let's talk about the</p> <p>10 peer review process.</p> <p>11 Do you have a view on the peer review</p> <p>12 process and whether it's a good thing or a bad</p> <p>13 thing?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Well, please share it with us.</p> <p>16 A. I think it's a mixed bag. Generally,</p> <p>17 peer review has improved the quality of my</p> <p>18 scholarly articles. It can also be a process</p> <p>19 that gets abused and it can also be a process</p> <p>20 that's subverted. So my views are nuanced and</p> <p>21 complex.</p> <p>22 Q. How are they subverted, in your view?</p> <p>23 A. One example I speak about in one of my</p> <p>24 books is about how an editor has full carte</p> <p>25 blanche in picking the reviewer. And so if an</p>	<p style="text-align: right;">Page 52</p> <p>1 report which is Exhibit 5. And I just want to go</p> <p>2 broadly through the report first and then we can</p> <p>3 drill down.</p> <p>4 After your introductory paragraph on</p> <p>5 page 1 of Exhibit 5, you then discuss your</p> <p>6 credentials, correct?</p> <p>7 A. Excuse me, ma'am. You froze there and I</p> <p>8 didn't hear anything besides "after paragraph 1."</p> <p>9 Q. Oh, okay. Let's all -- let me repeat</p> <p>10 the question.</p> <p>11 After your introductory paragraph, you</p> <p>12 then have a section on your credentials, correct?</p> <p>13 A. Yes, that's correct.</p> <p>14 Q. Which we -- and I think we've done quite</p> <p>15 a bit of that. And that goes over until page 4,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And then beginning at page 4, you talk</p> <p>19 about the focus of your research, correct?</p> <p>20 A. Yes.</p> <p>21 Q. I'm interested in one sentence that</p> <p>22 appears in this section. You say: I am</p> <p>23 currently the author of the draft of a test which</p> <p>24 is designed to improve the measurement of</p> <p>25 intelligence in developing countries.</p>
<p style="text-align: right;">Page 51</p> <p>1 editor wants to, to give a manuscript a little</p> <p>2 bit of a boost or more of a hurdle, you can, as</p> <p>3 an editor, choose reviewers who you have a pretty</p> <p>4 good idea how they're going to respond to a</p> <p>5 manuscript, and so that's one way it could be</p> <p>6 subverted.</p> <p>7 There are also things called peer review</p> <p>8 rings where people either masquerade as peer</p> <p>9 reviewers on their own work, which is incredibly</p> <p>10 unethical, or they often have an informal</p> <p>11 back-room agreement to review one another's work</p> <p>12 positively.</p> <p>13 And so there are times when peer review</p> <p>14 is a system that breaks down.</p> <p>15 Q. All right. I'd like to now turn to your</p> <p>16 report. So if you could get that in front of</p> <p>17 you, Dr. Warne. It's Exhibit 5.</p> <p>18 MS. GIFFEN: In fact, this is a perfect</p> <p>19 time to take like a ten-minute break because it's</p> <p>20 that time of the morning. So can we do that?</p> <p>21 Let's go off the record for ten minutes.</p> <p>22 (A recess was taken.)</p> <p>23 BY MS. GIFFEN:</p> <p>24 Q. Dr. Warne, as I mentioned before we</p> <p>25 broke quickly, I'd like to now turn to your</p>	<p style="text-align: right;">Page 53</p> <p>1 Talk more about that. What does that</p> <p>2 mean?</p> <p>3 A. That's a test that I've designed called</p> <p>4 the Warne Intercultural Test of Intelligence, or</p> <p>5 the WITI. I have designed it in the hopes of</p> <p>6 having -- of improving cross-cultural</p> <p>7 measurement.</p> <p>8 That process has stalled because of a</p> <p>9 lack of funding and then also obtaining full-time</p> <p>10 employment and moving. But I've used what I've</p> <p>11 learned about cross-cultural measurement and</p> <p>12 things like measurement and variants to design</p> <p>13 that test.</p> <p>14 Q. Attempt -- your efforts are to improve</p> <p>15 the validity of intelligence test-taking into</p> <p>16 consideration, those cross-cultural issues,</p> <p>17 right?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And then on page 5, the opening</p> <p>20 paragraph on page 5, you state at the end: My</p> <p>21 careful consideration of the science related to</p> <p>22 the article shows that this termination was not</p> <p>23 due to any scientific inadequacies in the Lasker,</p> <p>24 et al., 2019 article.</p> <p>25 Do you see that?</p>

<p style="text-align: right;">Page 54</p> <p>1 A. Yes.</p> <p>2 Q. And that is because you conclude -- and</p> <p>3 we'll go into it in a minute -- that the science</p> <p>4 in the paper is sound, right?</p> <p>5 A. Correct.</p> <p>6 Q. All right. That first sentence of that</p> <p>7 paragraph, you write: As I understand the issue,</p> <p>8 the Lasker, et al., article caused a controversy</p> <p>9 that led to Cleveland State University</p> <p>10 terminating Dr. Pesta's employment.</p> <p>11 How did you obtain that understanding?</p> <p>12 A. I don't recall exactly, but I probably</p> <p>13 would have heard through colleagues on social</p> <p>14 media or in news reporting about that. But I</p> <p>15 don't recall how I learned that Dr. Pesta had</p> <p>16 lost his employment.</p> <p>17 Q. Okay. But you -- I think we've already</p> <p>18 established that you never looked at and did not</p> <p>19 know about the underlying documents with respect</p> <p>20 to Dr. Pesta's termination, right? You never</p> <p>21 looked at that stuff?</p> <p>22 A. That's correct.</p> <p>23 Q. Dr. Warne, did you answer? If you did,</p> <p>24 it didn't come through.</p> <p>25 A. I said "that's correct."</p>	<p style="text-align: right;">Page 56</p> <p>1 through the top of page 8 -- give us terminology</p> <p>2 that's -- that I assume is important for</p> <p>3 understanding your report, right?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. And one of the -- one question I</p> <p>6 have is, in Section C, under subsection (c), you</p> <p>7 write: IQ is the score produced by an</p> <p>8 intelligence test.</p> <p>9 Isn't IQ a score produced by a</p> <p>10 particular kind of intelligence test?</p> <p>11 MR. KELLY: Objection to form.</p> <p>12 Go ahead.</p> <p>13 A. I don't understand the, the distinction</p> <p>14 that you're trying to make.</p> <p>15 Q. Okay. So you say in Section B: An</p> <p>16 intelligence test is any instrument designed by</p> <p>17 scientists to measure a person's overall</p> <p>18 cognitive ability. And then you go on to</p> <p>19 describe that there's lots of things that can fit</p> <p>20 into that category, whether or not the researcher</p> <p>21 calls it an intelligence test, right?</p> <p>22 A. That's correct.</p> <p>23 Q. All right. Do they all measure IQ?</p> <p>24 A. IQ is a score. It's not something</p> <p>25 inside someone's head to measure. IQ is a score</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Okay. And when you say that you may</p> <p>2 have heard it from colleagues or in the media,</p> <p>3 that would have been you were, you were reading</p> <p>4 some report from somebody else with respect to</p> <p>5 Dr. Pesta's termination; is that right?</p> <p>6 A. I don't recall.</p> <p>7 Q. Did you ever talk with Dr. Pesta about</p> <p>8 why he was terminated?</p> <p>9 A. No. If I recall, he did send me an</p> <p>10 email saying -- he forwarded me an email about</p> <p>11 controversy, but no, I didn't correspond with him</p> <p>12 about this topic.</p> <p>13 Q. Did you ever talk with John Fuerst about</p> <p>14 the circumstances of Dr. Pesta's termination?</p> <p>15 A. Not that I recall.</p> <p>16 Q. And as you sit here today, you don't</p> <p>17 know the reasons why CSU says it terminated</p> <p>18 Dr. Pesta; is that true?</p> <p>19 A. If I knew any reasons, they would have</p> <p>20 been from media reports, but I do not recall</p> <p>21 those --</p> <p>22 Q. Okay.</p> <p>23 A. -- at this time.</p> <p>24 Q. All right. And then back to the report</p> <p>25 on page 5. You then -- for -- looks like pages 5</p>	<p style="text-align: right;">Page 57</p> <p>1 that quantifies someone's intelligence level.</p> <p>2 Q. All right.</p> <p>3 A. So to say that a test measures IQ, it</p> <p>4 doesn't make sense because it's like saying, it's</p> <p>5 like saying a thermometer measures Fahrenheit.</p> <p>6 The thermometer measures temperature. The tests</p> <p>7 measure intelligence. Fahrenheit or IQ are just</p> <p>8 metrics for what they measure.</p> <p>9 Q. All right. But if we decide that we're</p> <p>10 going to use Fahrenheit, then all of the tests</p> <p>11 that we employ will have that measurement as the</p> <p>12 base, right?</p> <p>13 A. They will use that metric.</p> <p>14 Q. Okay. But not all intelligence tests</p> <p>15 use the metric of an IQ analysis as you go on to</p> <p>16 describe in your report, true?</p> <p>17 A. That's correct, but it's easy to convert</p> <p>18 scores to an IQ metric, just as it's easy to</p> <p>19 convert Fahrenheit to Celsius, or vice versa.</p> <p>20 Q. So are you saying that cognitive tests</p> <p>21 generally are easy to convert to an IQ score?</p> <p>22 A. That's like saying a thermometer is easy</p> <p>23 to convert to a temperature.</p> <p>24 The test measures intelligence, and</p> <p>25 regardless of the score that the creators use, we</p>

<p style="text-align: right;">Page 58</p> <p>1 can convert that score to the IQ metric.</p> <p>2 Q. Okay. In one of your books, I believe</p> <p>3 you describe how IQ is not the same thing as</p> <p>4 intelligence. Do you agree?</p> <p>5 A. Yes. Just as I've said, IQ's the</p> <p>6 metric; intelligence is the thing inside people's</p> <p>7 head that it's measuring. Excuse me, that the</p> <p>8 test is measuring.</p> <p>9 Q. Okay. So what is the new -- you just</p> <p>10 described it a second ago -- the new intelligence</p> <p>11 test that you're going to -- that you're trying</p> <p>12 to employ that will take into account those</p> <p>13 cross-cultural differences? How is it different?</p> <p>14 MR. KELLY: Object to the form of the</p> <p>15 question. I believe you're mischaracterizing his</p> <p>16 testimony.</p> <p>17 You can answer, Dr. Warne.</p> <p>18 A. Could you restate the question again.</p> <p>19 Q. How the -- the intelligence tests you</p> <p>20 are attempting to develop that you described to</p> <p>21 us a couple of minutes ago that tries to take</p> <p>22 into account in a more meaningful way</p> <p>23 cross-cultural differences, how is it different</p> <p>24 than a standard intelligence test?</p> <p>25 MR. KELLY: Object to the form of the</p>	<p style="text-align: right;">Page 60</p> <p>1 When -- the question I have is -- and,</p> <p>2 again, in my nonscientist mind -- that I hear you</p> <p>3 saying what you're attempting to do is to isolate</p> <p>4 what are potentially confounding factors in</p> <p>5 trying to measure, as you describe it, the</p> <p>6 intelligence inside folks' head, and to do that</p> <p>7 by attempting to get a metric that will avoid</p> <p>8 using those potential -- those factors that may</p> <p>9 potentially change the result; is that right?</p> <p>10 MR. KELLY: Object to the form of the</p> <p>11 question.</p> <p>12 A. I would say that my goal is to identify</p> <p>13 stimuli that work in developing countries because</p> <p>14 my colleagues in developing countries often have</p> <p>15 no option but to use western-developed tests and,</p> <p>16 as a consequence, I believe it underestimates</p> <p>17 intelligence in their samples.</p> <p>18 And so my goal is to find something that</p> <p>19 works in a lot of countries and that does not</p> <p>20 penalize you for not being familiar with western</p> <p>21 stimuli, western schooling, et cetera.</p> <p>22 Q. Yeah.</p> <p>23 In fact, I think you said in one of your</p> <p>24 papers or perhaps your book that if an</p> <p>25 intelligence -- the result of an intelligence</p>
<p style="text-align: right;">Page 59</p> <p>1 question. The report actually speaks not of</p> <p>2 cross-cultural differences but of developing</p> <p>3 countries.</p> <p>4 With that objection, please answer,</p> <p>5 Dr. Warne.</p> <p>6 A. Cross-national, cross-cultural</p> <p>7 measurement of any characteristic in psychology,</p> <p>8 whether it's personality, values, intelligence,</p> <p>9 other things, this is a very complex issue. The</p> <p>10 need for the WITI, the IC, is that it's universal</p> <p>11 that there -- that people, humans have</p> <p>12 intelligence in their head; what's not universal</p> <p>13 is the manifestations.</p> <p>14 In a hunter-gatherer society, for</p> <p>15 example, being the best at trapping animals may</p> <p>16 be a manifestation of intelligence. In our</p> <p>17 society, perhaps solving math problems may be a</p> <p>18 good measure of it.</p> <p>19 And so my goal with the test is to find</p> <p>20 stimuli that are universal across cultures and</p> <p>21 across countries that, that apply and in --</p> <p>22 throughout the whole species and measure</p> <p>23 intelligence with manifestations that are held</p> <p>24 across groups.</p> <p>25 Q. Okay. That's helpful.</p>	<p style="text-align: right;">Page 61</p> <p>1 test with respect to particularly a developing</p> <p>2 country is less -- if the average is less than</p> <p>3 70, then it's not valid?</p> <p>4 A. I've said that a couple places, mostly</p> <p>5 online on my personal website.</p> <p>6 Yes, I'm extremely -- not just 70. I</p> <p>7 would say even 75 or perhaps 80 -- I'm extremely</p> <p>8 skeptical about average IQs in economically</p> <p>9 developing nations when those are found using</p> <p>10 western tests, which almost always they are. And</p> <p>11 that's, that's something that I've been very</p> <p>12 vocal about, that you, you -- that you need to</p> <p>13 consider the complexities of cross-cultural</p> <p>14 testing, and not everyone does.</p> <p>15 Q. Okay. On page 6 of your report, you</p> <p>16 define admixed individuals, and you state in that</p> <p>17 section that admixed individuals show that the</p> <p>18 boundary between racial and ethnic groups is</p> <p>19 fuzzy.</p> <p>20 What do you mean by that?</p> <p>21 A. These are not clear-cut groups. This is</p> <p>22 not, for example, the difference between heads</p> <p>23 and tails on a coin. There is some permeability</p> <p>24 between these groups, and that's just the reality</p> <p>25 of humans.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. And then you describe for us in the next 2 several sections the difference between the 3 environmental hypothesis and environmentalists 4 and the hereditarian hypothesis and 5 hereditarians. 6 One thing I'm interested in, at the top 7 of page 7, you say: What unites 8 environmentalists is the denial that genetic 9 differences across racial and ethnic groups is a 10 cause of the observed IQ differences among 11 groups. 12 And you -- I guess here's my question: 13 Can you tell me -- can you cite to me an 14 environmentalist who denies that there are 15 genetic factors altogether in the observed IQ 16 differences between racial groups? 17 A. Yes. Richard Nesbitt in his book 18 Intelligence and How to Get It; James Flynn in 19 his work from 1980 until his death, those would 20 be the most prominent. 21 Q. Okay. Take them one at a time. Nesbitt 22 and who else? 23 A. Richard Nesbitt and James Flynn, those 24 are the two that come to mind immediately. 25 Q. And you met James Flynn, right?</p>	<p style="text-align: right;">Page 64</p> <p>1 That was very poorly worded at the outset. 2 You tell me that -- you tell us that 3 hereditarians believe that genetics are a cause, 4 at least a cause of the observed IQ differences 5 between racial groups and that difference would 6 account for somewhere between 1 percent and 100 7 percent, right? 8 A. Yes. 9 Q. Okay. So you would, you would say that 10 someone is a hereditarian if they say only 1 11 percent of genes -- excuse me -- that genetics 12 are only 1 percent of the cause of those observed 13 IQ differences? 14 A. From my definition of hereditarian, yes. 15 Q. Do you think that other hereditarians 16 would agree with you? 17 A. I believe that some would say, if it's a 18 trivial percentage, no, you're for all intents 19 and purposes an environmentalist, but above X 20 percent, that's where you become a hereditarian. 21 But whether there is a dividing line or 22 not is arbitrary to me. The most objective 23 dividing line between environmentalist and 24 hereditarian, is it zero or is it not zero. 25 Q. Okay. And anybody who says "not zero"</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Yes. That's one of the great honors of 2 my career. 3 Q. And one of the things that you admired 4 James Flynn was because he was open to 5 discussions of both the environmentalist 6 hypothesis and the hereditarian hypothesis, 7 right? 8 A. There are many reasons to admire James 9 Flynn; that's just one of them. 10 Q. But you believe that James Flynn would 11 say that genetics plays no role whatsoever in the 12 observed IQ differences among racial populations? 13 None? Zero? 14 A. From what I understand, yes. James 15 Flynn would say, would say that were he alive 16 today. 17 Q. And you would say the same thing about 18 Nesbitt; that genetics plays no role whatsoever 19 in the observed differences in IQ among, among 20 racial groups? 21 A. That's my understanding of his book, 22 Intelligence and How to Get It. 23 Q. On the other hand, you say that 24 hereditarians, it's somewhere between 1 percent 25 and 100 percent that the -- I've -- strike that.</p>	<p style="text-align: right;">Page 65</p> <p>1 is in the hereditarian camp? 2 A. In my -- by my definition, yes. 3 Q. Okay. What are the genes that are 4 associated with intelligence? 5 A. I cannot give you an exact gene 6 identification label, but there have been dozens 7 if not hundreds of genes that are found -- sorry. 8 Excuse me -- alleles of genes that have been 9 found to be more common in groups with higher IQ 10 and less common in groups with lower IQ. 11 This research has mostly been done 12 within European ancestry groups, but we need to 13 be careful, though, because of linkage -- this 14 equilibrium. Just because an allele is found 15 more often in one group than another does not 16 mean that that allele makes people smarter. 17 Q. The difference between correlation and 18 causation, right? 19 A. Yes, and that's because there's what -- 20 we call it spatial auto correlation. Sometimes 21 the, the programs that do the genetic analysis 22 flag an allele and it may be located near the 23 real causal allele. 24 And that's why I'm very careful in all 25 my research to say, you know, this is likely or,</p>

<p style="text-align: right;">Page 66</p> <p>1 you know, it's possible and I'm not -- I</p> <p>2 definitely don't say, oh, yes, we have identified</p> <p>3 this gene or these group of genes that make</p> <p>4 people smarter. We've identified genes that</p> <p>5 appear more often in smart people, but --</p> <p>6 Q. You --</p> <p>7 A. -- I cannot tell you here is a</p> <p>8 particular gene that makes someone smarter.</p> <p>9 Q. Okay. And you're not alone in that,</p> <p>10 right, that people have been searching for the --</p> <p>11 to identify the genes associated with</p> <p>12 intelligence. And part of the reason why we've</p> <p>13 been unsuccessful thus far in identifying those</p> <p>14 genes is because intelligence is deemed to be an</p> <p>15 extremely complex issue and the manifestation or</p> <p>16 the expression of which genes cause intelligence</p> <p>17 or don't is an extremely complex issue, agreed?</p> <p>18 MR. KELLY: Object to the form of the</p> <p>19 question.</p> <p>20 You can go ahead and answer.</p> <p>21 A. There's different reasons. Like I said,</p> <p>22 there have been dozens if not hundreds of alleles</p> <p>23 for particular genes found within Europeans. And</p> <p>24 often we're finding -- I say a collective "we."</p> <p>25 I'm not doing this research, in particular,</p>	<p style="text-align: right;">Page 68</p> <p>1 achievement tests" and what are the intelligence</p> <p>2 tests which you're comparing them?</p> <p>3 A. An academic achievement test is a test</p> <p>4 designed to measure how much someone has learned</p> <p>5 after they have been taught a body of knowledge.</p> <p>6 So, for example, the end of your</p> <p>7 accountability tests that public school children</p> <p>8 in the United States have to take to see how much</p> <p>9 math they've learned that year, that would be an</p> <p>10 academic achievement test. A child sat through a</p> <p>11 math course for a year and now we're going to</p> <p>12 measure how much math they know.</p> <p>13 Q. Okay.</p> <p>14 A. The intelligence tests I'm referring to</p> <p>15 are more the abstract measures that aren't tied</p> <p>16 to a particular curriculum, per se.</p> <p>17 Q. And then turn to page 13, please.</p> <p>18 A. Yes.</p> <p>19 Q. In that paragraph, you say: Despite</p> <p>20 decades of research, there is no consensus</p> <p>21 regarding the exact causes of the average</p> <p>22 differences in intelligence among racial and</p> <p>23 ethnic groups. Neither the hereditarian nor the</p> <p>24 environmental hypotheses have been unequivocally</p> <p>25 disproven and intelligent experts can be found in</p>
<p style="text-align: right;">Page 67</p> <p>1 myself.</p> <p>2 That certain genes and certain alleles</p> <p>3 appear to be correlated with different</p> <p>4 phenotypes. And so there are a lot of reasons.</p> <p>5 It's complex. Some of them are measurement; some</p> <p>6 of them are genetic; some of them are</p> <p>7 technological. But intelligence is not unique in</p> <p>8 that. You could say the same thing about</p> <p>9 depression. You could say the same thing about</p> <p>10 heart disease. You could say the same thing</p> <p>11 about obesity.</p> <p>12 Q. All right. But just to be clear, when</p> <p>13 we say there are alleles that are associated with</p> <p>14 phenotypes, that's different than saying those</p> <p>15 alleles are associated with intelligence, agreed?</p> <p>16 A. Intelligence is a phenotype.</p> <p>17 Q. Okay. On page 11 of your report, if you</p> <p>18 would turn there.</p> <p>19 A. Yes. I'm ready.</p> <p>20 Q. Okay. All right. In the top paragraph,</p> <p>21 you say: For example, academic achievement tests</p> <p>22 tend to have smaller gaps than intelligence</p> <p>23 tests.</p> <p>24 Could you say more about that? What</p> <p>25 does that mean? What do you mean by "academic</p>	<p style="text-align: right;">Page 69</p> <p>1 both camps.</p> <p>2 You still -- you hold with that, that</p> <p>3 opinion?</p> <p>4 A. Yes, I agree with that.</p> <p>5 Q. Okay. What you're saying in the course</p> <p>6 of your report is, and because we don't know what</p> <p>7 those causes are, we should do more research,</p> <p>8 right? That's part of the point here?</p> <p>9 A. Yes.</p> <p>10 Q. And then you go on to discuss both the</p> <p>11 logic of both of the theories, right? The</p> <p>12 hereditarian and the environmentalist theories</p> <p>13 and where it seems -- where they seem to fit and</p> <p>14 where they do not, agreed?</p> <p>15 A. Correct.</p> <p>16 Q. And your conclusion is the jury's out on</p> <p>17 who has got the right answers, correct?</p> <p>18 A. Correct.</p> <p>19 Q. All right. And then on page 16 -- and,</p> <p>20 again, we're at page 16 of the report.</p> <p>21 And, at this point, we've not yet</p> <p>22 focused on the last paper or Dr. Pesta's work,</p> <p>23 correct? This is by way of explanation of the</p> <p>24 context in which the research was performed,</p> <p>25 right?</p>

<p style="text-align: right;">Page 70</p> <p>1 A. Correct.</p> <p>2 Q. All right. And then you go on to talk</p> <p>3 about admixture studies and why they're logical.</p> <p>4 Why are admixture studies logical since,</p> <p>5 as I understand it, you're necessarily dealing</p> <p>6 with a population of individuals whose genetic</p> <p>7 makeup are not consistent with any particular</p> <p>8 racial group?</p> <p>9 MR. KELLY: Object to the form of the</p> <p>10 question.</p> <p>11 Go ahead, answer.</p> <p>12 A. That is an incorrect understanding. As</p> <p>13 I say earlier in the report, admixed individuals</p> <p>14 have ancestry from multiple groups.</p> <p>15 Q. So why -- if they have ancestry from</p> <p>16 multiple groups, why, then, would -- why, then,</p> <p>17 is an analysis that would include an analysis of</p> <p>18 the genetic makeup of those ancestral groups, why</p> <p>19 would that be valid?</p> <p>20 A. Within admixed populations, there is</p> <p>21 variation in how much ancestry individuals have</p> <p>22 from those parent groups, and admixture studies</p> <p>23 take advantage of that natural variation.</p> <p>24 And what admixture studies do is they</p> <p>25 take the, the identified percentage of ancestry</p>	<p style="text-align: right;">Page 72</p> <p>1 study cannot say here is one particular segment</p> <p>2 of DNA that makes people smarter. It can say,</p> <p>3 here is a group of alleles that are more common</p> <p>4 in population A than population B, and those</p> <p>5 groups of alleles are found in higher IQ</p> <p>6 individuals.</p> <p>7 Q. Okay. All right. Then if we move on to</p> <p>8 page 18 of your report. And in -- from page 18</p> <p>9 to the top of page 21, you're now analyzing the</p> <p>10 Lasker report, correct, Dr. Pesta's publication,</p> <p>11 correct?</p> <p>12 A. [Indicating.] Yes.</p> <p>13 Q. Yes. Okay. Thank you.</p> <p>14 I need to have a verbal answer. I'm</p> <p>15 sorry.</p> <p>16 And then on page 21 in -- and 22, you</p> <p>17 render your professional judgment with respect to</p> <p>18 the Lasker paper, right?</p> <p>19 A. That's correct.</p> <p>20 Q. I take it you did not do the same</p> <p>21 analysis that Dr. Pesta did in the Lasker paper;</p> <p>22 is that true?</p> <p>23 A. Are you talking about when I wrote my,</p> <p>24 my report?</p> <p>25 Q. Yes. Or at any point. Or at any point,</p>
<p style="text-align: right;">Page 71</p> <p>1 from each parent group and correlate it with a</p> <p>2 score on a phenotype. If that correlation is</p> <p>3 nonzero, that means that, for one of those parent</p> <p>4 groups, the genetic -- if the -- let me back up a</p> <p>5 tiny bit.</p> <p>6 If the correlation is nonzero, that</p> <p>7 indicates that people with more ancestry from,</p> <p>8 from one of those parent groups, on average, have</p> <p>9 higher scores on that phenotype than admixed</p> <p>10 individuals with less ancestry. And when that</p> <p>11 occurs, it's natural to say, well, perhaps this</p> <p>12 correlation is genetic and that, therefore, we</p> <p>13 can draw a conclusion that the differences in</p> <p>14 average phenotypes for the parent groups may also</p> <p>15 be genetic.</p> <p>16 Q. Okay. You have with the statement that</p> <p>17 you just made the same issue, do we not, of the</p> <p>18 difference between -- potentially between</p> <p>19 correlation and causation. You can say there's a</p> <p>20 correlation, but you can't say there's causation,</p> <p>21 agreed?</p> <p>22 A. Yes. Hence, why in the report I say</p> <p>23 "likely genetic" or "probable."</p> <p>24 And I -- like I said, I'm very careful</p> <p>25 of that in all my writing because an admixture</p>	<p style="text-align: right;">Page 73</p> <p>1 actually.</p> <p>2 A. No, I did not do the same analysis when</p> <p>3 I evaluated his article.</p> <p>4 I have, in my admixture study, the</p> <p>5 Mankind Quarterly One, done such an analysis, but</p> <p>6 the Lasker, et al., articles/analysis is more</p> <p>7 sophisticated and better than mine.</p> <p>8 Q. Okay. And I think, given that you had</p> <p>9 access to the dataset that the Lasker paper</p> <p>10 researchers had access to and you found that you</p> <p>11 could not handle that quantity of information,</p> <p>12 was that -- is that another reason why you did</p> <p>13 not do that same analysis?</p> <p>14 A. I don't know where -- whether the --</p> <p>15 well, I don't have access to NIH data when I did</p> <p>16 the analysis, and I don't know whether the data I</p> <p>17 had access to in the past is the same dataset. I</p> <p>18 don't remember anything about a file I opened up</p> <p>19 once or twice.</p> <p>20 But, as a methodologist, I am qualified</p> <p>21 to examine someone's report and see whether it</p> <p>22 conforms with, with accepted methodologies.</p> <p>23 Q. Okay. And your conclusion here is it</p> <p>24 did?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 74</p> <p>1 Q. And then on page 22, you mentioned some</p> <p>2 issues that you have with the study. Could you</p> <p>3 tell us about those, please.</p> <p>4 A. Yes. No study's perfect. As I state in</p> <p>5 the report, some of the people in the Lasker,</p> <p>6 et al., study are very young. IQs tend to</p> <p>7 stabilize by about age ten to twelve, and some of</p> <p>8 the sample members are younger than what you see</p> <p>9 there.</p> <p>10 And then, also, the whole sample comes</p> <p>11 from just the Philadelphia area, and so I'm not</p> <p>12 sure how much this generalizes to other parts of</p> <p>13 the United States. And I definitely wouldn't</p> <p>14 cite this to talk about international IQ</p> <p>15 differences.</p> <p>16 But all that being said, it's not fair</p> <p>17 to judge any research against the standards of</p> <p>18 perfection because there is no such thing as</p> <p>19 perfect social science research. And as I state</p> <p>20 in the, in the report, it's still one of the</p> <p>21 strongest tests of the hereditarian hypothesis</p> <p>22 that's ever been published.</p> <p>23 Q. Okay. Does it jog your memory that the</p> <p>24 request that you made to NIH for the dbdGaP [sic]</p> <p>25 data was called Continental Genetic Ancestry</p>	<p style="text-align: right;">Page 76</p> <p>1 study that will help behavioral geneticists</p> <p>2 understand how population structure has impacted</p> <p>3 heritability of different neurocognitive</p> <p>4 phenotypes.</p> <p>5 Does that ring a bell?</p> <p>6 A. Like I said, I don't recall what I, I</p> <p>7 wrote, but if you got that from the NIH website</p> <p>8 and you're reading it accurately, then, then I</p> <p>9 probably did write it.</p> <p>10 Q. Okay. Did you submit your request for</p> <p>11 that dataset to Utah Valley University?</p> <p>12 A. I believe so, but I don't remember</p> <p>13 clearly. You're talking about something that</p> <p>14 happened six years ago for a project that fizzled</p> <p>15 out. It's not a memorable milestone of my</p> <p>16 career.</p> <p>17 Q. Okay. So you don't recall whether --</p> <p>18 what the analysis was that Utah Valley did with</p> <p>19 respect to that?</p> <p>20 A. No one did any analysis with the data I</p> <p>21 accessed.</p> <p>22 Q. Okay.</p> <p>23 A. I'm positive about that.</p> <p>24 Q. Do you know whether you sought Utah</p> <p>25 Valley's IRB approval before embarking on this</p>
<p style="text-align: right;">Page 75</p> <p>1 Correlates of Neurocognitive Test Battery Scores?</p> <p>2 A. I don't remember the title.</p> <p>3 THE REPORTER: Did you object?</p> <p>4 MR. KELLY: No.</p> <p>5 THE REPORTER: Sorry.</p> <p>6 Q. And it appears that it was closed in</p> <p>7 March of 2019. Does that sound right?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you recall whether the purpose of the</p> <p>10 study was to identify whether the percentage of</p> <p>11 ancestry that a person has from a particular</p> <p>12 continent is correlated with their scores on a</p> <p>13 variety of psychological tests? Does that sound</p> <p>14 familiar?</p> <p>15 A. I don't recall what I wrote in the</p> <p>16 application, but that does sound like my</p> <p>17 verbiage, but I cannot confirm whether, whether</p> <p>18 that's, that's what I said I used the data for.</p> <p>19 Q. I got this from the NIH website, I'll</p> <p>20 tell you.</p> <p>21 A. Okay.</p> <p>22 Q. And then you say: The objective of this</p> <p>23 study is to identify continental genetic ancestry</p> <p>24 correlates of scores on tests in a neurocognitive</p> <p>25 assessment battery. This is a correlational</p>	<p style="text-align: right;">Page 77</p> <p>1 study?</p> <p>2 A. I don't remember whether NIH requires</p> <p>3 institutional approval first or not. And I don't</p> <p>4 remember whether the IRB would require NIH</p> <p>5 permission first before they, before they would</p> <p>6 approve it. But if IRB approval was, then I --</p> <p>7 you know, I don't, I don't recall.</p> <p>8 Q. You don't remember, you don't remember</p> <p>9 the process. That's what I'm hearing. Am I</p> <p>10 right about that?</p> <p>11 A. It's something I've done only once in my</p> <p>12 career years ago for a project that fizzled out.</p> <p>13 I don't know the procedures to get NIH approval</p> <p>14 for the dbGaP data.</p> <p>15 Q. All right. Then if you go to page 23 of</p> <p>16 your report. Tell me when you're there, please.</p> <p>17 A. I'm ready.</p> <p>18 Q. Now you describe the context of the</p> <p>19 controversy surrounding the Lasker paper, and</p> <p>20 that then goes to the conclusion of the report on</p> <p>21 page 27, correct?</p> <p>22 A. Yes.</p> <p>23 Q. All right. And as I understand what you</p> <p>24 have written here, you are describing events that</p> <p>25 have been described to you through media reports</p>

<p style="text-align: right;">Page 78</p> <p>1 or publications of other researchers, right?</p> <p>2 A. All the sources for what I'm describing</p> <p>3 at the section are cited.</p> <p>4 Q. Okay. There isn't an independent source</p> <p>5 other than what you cited in the report, correct?</p> <p>6 A. No.</p> <p>7 Q. All right. Go to page 25, please.</p> <p>8 A. Okay.</p> <p>9 Q. And at the -- with regard to the</p> <p>10 footnote 182. And that footnote refers to, as I</p> <p>11 understand it, your assertion that consequences</p> <p>12 are chilled by including restricted access to</p> <p>13 datasets.</p> <p>14 And then your citation there is to L --</p> <p>15 or excuse me, Lee J., an article in City Journal,</p> <p>16 which I think is a media outlet, right?</p> <p>17 A. Correct.</p> <p>18 Q. Do you know anything more about Lee</p> <p>19 J.'s -- or J. Lee's assertions other than what is</p> <p>20 contained in that newspaper article?</p> <p>21 A. I believe that the author of that is</p> <p>22 James Lee, who last I heard was at University of</p> <p>23 Minnesota, but I probably haven't had any contact</p> <p>24 with him that I can recall in five years.</p> <p>25 But -- and so anything about his</p>	<p style="text-align: right;">Page 80</p> <p>1 coauthorship, to a lot of people at that time.</p> <p>2 Q. What was the nature of the article they</p> <p>3 wanted you to coauthor?</p> <p>4 A. I don't remember.</p> <p>5 Q. Who was on the call?</p> <p>6 A. I don't remember that either. I only</p> <p>7 remember how many people it was or how long it</p> <p>8 lasted. I can't tell you how many times in my</p> <p>9 career, you know, a bunch of, a bunch of</p> <p>10 scientists get together, hey, let's coauthor, and</p> <p>11 then after the initial conversation, nothing ever</p> <p>12 happens. Or people have to drop out and -- it's</p> <p>13 just how it is.</p> <p>14 Q. Okay. So you mentioned you were talking</p> <p>15 with Dr. Pesta. When is the first time you</p> <p>16 recall having any correspondence with Dr. Pesta?</p> <p>17 A. I don't recall the exact date, but we</p> <p>18 have exchanged a few emails. I don't recall</p> <p>19 topics or anything.</p> <p>20 Q. And how did you know one another in</p> <p>21 order to correspond with each other?</p> <p>22 A. Scientists cite one another. They read</p> <p>23 one another's work. It's not unusual for a</p> <p>24 scientist to see a name pop up a couple times on</p> <p>25 articles that, that they, they may, you know,</p>
<p style="text-align: right;">Page 79</p> <p>1 assertions regarding a restricted dataset, I</p> <p>2 would have no idea about what those assertions</p> <p>3 may be outside of that article.</p> <p>4 Q. Okay. All right. Now I'd like to go to</p> <p>5 a different topic. When did you first -- and I</p> <p>6 may have asked this before, so forgive me if this</p> <p>7 is a repetition.</p> <p>8 When did you first meet or talk to</p> <p>9 Dr. Pesta?</p> <p>10 A. The only time that I can recall I've</p> <p>11 ever talked with Dr. Pesta was a video call in</p> <p>12 early 2020. I don't believe I've ever met him in</p> <p>13 person.</p> <p>14 Q. And what were the circumstances of that</p> <p>15 video call?</p> <p>16 A. Dr. Pesta and some of his colleagues</p> <p>17 were interested in coauthoring with me. Again,</p> <p>18 nothing came of that. I didn't end up</p> <p>19 coauthoring with them. You know, beyond that one</p> <p>20 video call, I had to pull out because my wife was</p> <p>21 in the third trimester of a very complicated</p> <p>22 pregnancy. I also had five -- sorry -- three</p> <p>23 children ages five and under to take care of.</p> <p>24 Plus, we were dealing with the early stages of</p> <p>25 the pandemic and I said "no" to a lot of</p>	<p style="text-align: right;">Page 81</p> <p>1 read and say, ooh, I want to ask this person</p> <p>2 questions, I want to talk to this person, I want</p> <p>3 to coauthor with this person.</p> <p>4 As far as I can remember, each time it's</p> <p>5 Dr. Pesta reaching out to me and not vice versa.</p> <p>6 And I don't know what his motivations may be for</p> <p>7 any one particular, one particular time.</p> <p>8 Q. Okay. All right. I'd like to share my</p> <p>9 screen again and a document which we'll mark as</p> <p>10 Warne Exhibit 6.</p> <p>11 (Deposition Exhibit 6, 7-1-19 email, was</p> <p>12 marked for purposes of identification.)</p> <p>13 Q. Can you see it?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And you'll see this is, I</p> <p>16 believe, an email from you to Dr. Pesta dated</p> <p>17 July 1st, 2019.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And I'll give you an opportunity to read</p> <p>21 through it, if you like. And go ahead and read</p> <p>22 the first email that's on the thread. Let me</p> <p>23 know when you've had an opportunity to do that,</p> <p>24 Dr. Warne.</p> <p>25 A. Okay. I've read it.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. All right. So you were forwarding your</p> <p>2 email to a Dr. Rittman and you were forwarding</p> <p>3 that on to Dr. Pesta; do I have that right?</p> <p>4 A. That's what it seems to be.</p> <p>5 Q. Okay. And it related to Dr. Pesta's</p> <p>6 dismissal of his editorship for Psych, right?</p> <p>7 A. Apparently so. I don't remember -- I</p> <p>8 don't remember writing these emails, but based on</p> <p>9 the content, yes, it seems that's exactly what</p> <p>10 it's about.</p> <p>11 Q. What you recall is what you understood</p> <p>12 was the issue regarding Dr. Pesta's dismissal</p> <p>13 from Psych as editor?</p> <p>14 A. I don't recall anything beyond what's</p> <p>15 the content within that email.</p> <p>16 Q. And in your note to Dr. Pesta, you say:</p> <p>17 I trust you can identify the irony in my email.</p> <p>18 Do you have any -- can you further</p> <p>19 explain what kind of irony you're talking about?</p> <p>20 A. Most likely, it's referring to the</p> <p>21 second paragraph where it says: I'm shocked that</p> <p>22 a scholarly publisher would remove a qualified</p> <p>23 editor, things like that.</p> <p>24 Because, as I say in my expert report,</p> <p>25 there's a century of controversy surrounding the</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. And this is an email that is dated --</p> <p>2 MR. KELLY: October 3rd, 2019, I</p> <p>3 believe.</p> <p>4 MS. GIFFEN: Thank you.</p> <p>5 Q. -- October 3rd, 2019.</p> <p>6 MS. GIFFEN: Thank you, Fred.</p> <p>7 Q. And were you on this email? Did you</p> <p>8 receive it?</p> <p>9 I'll give you an oppor- -- go ahead and</p> <p>10 read through it.</p> <p>11 MR. KELLY: Any chance we could make</p> <p>12 this bigger? I'm having trouble myself seeing</p> <p>13 this.</p> <p>14 A. I can read it, but I can't tell -- it</p> <p>15 looks like Dr. Pesta was asked to review for</p> <p>16 Gifted Child Quarterly a study.</p> <p>17 Q. Were you the author of the study that he</p> <p>18 was being asked to review?</p> <p>19 A. No, I was not. I was one of the</p> <p>20 coeditors on the special issue of Gifted Child</p> <p>21 Quarterly.</p> <p>22 Q. I see.</p> <p>23 So -- and so you were asking him to</p> <p>24 review --</p> <p>25 A. Someone else's manuscript.</p>
<p style="text-align: right;">Page 83</p> <p>1 topic of the origin of average IQ differences</p> <p>2 across racial groups. And so the words of the</p> <p>3 email may say I'm shocked, but there's probably</p> <p>4 some irony saying no --</p> <p>5 Q. I see.</p> <p>6 A. -- not at all.</p> <p>7 Q. Sort of a tongue-in-cheek reference to</p> <p>8 being shocked?</p> <p>9 A. Yes. That would be, most likely, my</p> <p>10 interpretation.</p> <p>11 Q. All right. And how did you arrive at</p> <p>12 the conclusion that that was the reason for the</p> <p>13 dismissal?</p> <p>14 A. I don't remember. Like I said, I don't</p> <p>15 remember writing those emails, so I don't</p> <p>16 remember the context and how I came to that</p> <p>17 conclusion.</p> <p>18 Q. Did you do a search of your records for</p> <p>19 any correspondence that you had with Dr. Pesta?</p> <p>20 A. Yes, I did, and that did not show up.</p> <p>21 Q. Okay. I'd like to show you what we'll</p> <p>22 mark as Warne Exhibit 7.</p> <p>23 (Deposition Exhibit 7, 10-3-19 email,</p> <p>24 was marked for purposes of</p> <p>25 identification.)</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. I see. I see.</p> <p>2 And the manuscript related to -- I hope</p> <p>3 I'll get it right this time -- Terman? Is that</p> <p>4 the correct pronunciation of that researcher's</p> <p>5 name?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. All right. And did he do so?</p> <p>8 A. I don't recall.</p> <p>9 Q. Okay. And this was in October of 2019,</p> <p>10 right?</p> <p>11 A. Uh-huh.</p> <p>12 Q. And how did you get Dr. Pesta's contact</p> <p>13 information for purposes of using him as a</p> <p>14 potential reviewer?</p> <p>15 A. I don't recall whether it was me that</p> <p>16 suggested. It may have been my coeditor,</p> <p>17 Dr. Jennifer Jolly.</p> <p>18 So I don't recall, but scientific</p> <p>19 authors, corresponding authors have their email</p> <p>20 addresses on their articles, and faculty have</p> <p>21 their email addresses on their websites. It</p> <p>22 would have been very easy for Dr. Jolly or I to</p> <p>23 find that contact information.</p> <p>24 Q. Okay. All right. I'd like to direct</p> <p>25 your attention --</p>

<p style="text-align: right;">Page 86</p> <p>1 MS. GIFFEN: Was that Exhibit 7 we just</p> <p>2 did, Kristin? I think yes.</p> <p>3 THE REPORTER: Yes.</p> <p>4 MS. GIFFEN: Okay.</p> <p>5 THE REPORTER: Although, I don't think</p> <p>6 you ever did 3.</p> <p>7 MS. GIFFEN: Oh. Ms. Kaminski, who is</p> <p>8 listening, says I did, but we'll take that up in</p> <p>9 one minute. But we'll fix that if we have a...</p> <p>10 Q. So can you see my -- can you see the</p> <p>11 screen now, Dr. Warne?</p> <p>12 A. Yes.</p> <p>13 Q. Yes, you can?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Showing you what's -- what we'll</p> <p>16 mark as Warne Exhibit 8.</p> <p>17 (Deposition Exhibit 8, November 2019</p> <p>18 email string, was marked for purposes of</p> <p>19 identification.)</p> <p>20 Q. This appears to be an email</p> <p>21 correspondence between you and Dr. Pesta in</p> <p>22 November of 2019, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And this is -- you had requested some</p> <p>25 information from him back in October, right?</p>	<p style="text-align: right;">Page 88</p> <p>1 email correspondence we just looked at.</p> <p>2 A. The most recent email correspondence I</p> <p>3 had found, and I informed Mr. Kelly about it.</p> <p>4 Q. Okay. And we're about to look at that.</p> <p>5 Give me one second.</p> <p>6 MS. GIFFEN: I'm having trouble with my</p> <p>7 screen.</p> <p>8 Q. Showing you what we'll mark as Warne</p> <p>9 Exhibit 9.</p> <p>10 (Deposition Exhibit 9, Email</p> <p>11 correspondence with Gregory Connor, was</p> <p>12 marked for purposes of identification.)</p> <p>13 Q. This is one of the documents that we</p> <p>14 received this morning, if you'll take a moment to</p> <p>15 look it over, and then let me know when you're</p> <p>16 done.</p> <p>17 A. Could you scroll back to the top,</p> <p>18 please.</p> <p>19 Q. Oh, sure. I'm sorry.</p> <p>20 A. Oh, yes, I remember this.</p> <p>21 Q. So if I go all the way to the bottom,</p> <p>22 which I think is the beginning, this is not</p> <p>23 correspondence that you were a part of, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Do you know who Gregory Connor is? Is</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Yes.</p> <p>2 Q. I'm going to stop asking questions and</p> <p>3 give you an opportunity to read the document. So</p> <p>4 after you're done, let me know.</p> <p>5 A. Yes, it seems to be that I asked him for</p> <p>6 information about how tests are used in the</p> <p>7 hiring process, and it looks like he replied to</p> <p>8 me the next day with some links, and then I</p> <p>9 responded a month later -- that sounds right for</p> <p>10 me -- a month later saying thanks.</p> <p>11 Q. Okay. Do you remember anything more</p> <p>12 about that? Did you have any other communication</p> <p>13 with Dr. Pesta with respect to that?</p> <p>14 A. To that issue, no.</p> <p>15 Q. Okay. All right. Now I'd like to turn</p> <p>16 your attention to the documents that you did</p> <p>17 produce.</p> <p>18 A. Okay.</p> <p>19 Q. And you say that you didn't find any of</p> <p>20 those documents when you were reviewing your own</p> <p>21 records; is that right?</p> <p>22 A. Are you talking about the documents I</p> <p>23 produced or are you talking about the documents</p> <p>24 we've already looked at?</p> <p>25 Q. The documents we just looked at, the</p>	<p style="text-align: right;">Page 89</p> <p>1 that, is that -- I believe he's been identified</p> <p>2 previously as one of the editors with John Fuerst</p> <p>3 in a publication that you, that you had an</p> <p>4 article appear in.</p> <p>5 A. Yes. I believe he was one of the book</p> <p>6 editors.</p> <p>7 Q. I'm sorry. Book editors.</p> <p>8 A. Yeah, that appeared this year that</p> <p>9 republished two of my articles.</p> <p>10 Q. Okay. And so this -- the original email</p> <p>11 here is from Dr. Pesta to NIH, right?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Relating to Professor Connor's wanting</p> <p>14 to use data for a study that Dr. Connor was</p> <p>15 doing, right?</p> <p>16 A. That's what it seems to be.</p> <p>17 Q. Okay. And then the second email, which</p> <p>18 is January 30th, 2020, NIH then informs Dr. Pesta</p> <p>19 he cannot share the data, right?</p> <p>20 A. Apparently.</p> <p>21 Q. All right. And then another email that</p> <p>22 is from Dr. Pesta to others asking what steps</p> <p>23 they need to take to share it, right?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Okay. And then, finally -- I'm not sure</p>


<p style="text-align: right;">Page 90</p> <p>1 it's finally. It isn't "finally." 2 Then the next email is to Dr. Pesta from 3 Connor, who is the book editor, saying he thinks 4 it's a dead end trying to get the data, right? 5 A. That's what it seems to say. 6 Q. Okay. Then Dr. Pesta's response to 7 Connor saying he was sorry that it could not -- 8 did not work out, that's February 4th of 2020? 9 MR. KELLY: In addition. It's not the 10 only thing he says. 11 MS. GIFFEN: Yeah, I get that. 12 Q. So then -- and then, finally, on 13 March 20th, it's sent to you from Dr. Pesta on 14 March 20th, 2020? 15 A. Uh-huh. 16 Q. What do you recall is the reason why you 17 received that email? Why did -- 18 A. I don't know any reason why I received 19 it. In fact, until I searched my emails at 20 Mr. Kelly's request, I didn't remember this 21 correspondence at all. 22 Q. Okay. All right. Did you do anything 23 as a result of that correspondence? 24 A. I didn't reply and I don't recall ever 25 taking any action in response to it.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Yeah. 2 Okay. You can scroll down some more. 3 Okay. You can scroll down more. 4 Okay. You can scroll down further. 5 Okay. Keep scrolling down. 6 Okay. You can scroll down. 7 Okay. You can scroll down. 8 Okay. You can scroll down. 9 Okay. Scroll down. 10 This looks like a replication of some of 11 the stuff of their higher-ups. 12 You can probably scroll down. 13 Q. Okay. 14 A. Yeah, this is, this is the NIH 15 person's... 16 Q. What we already looked at, I think. 17 A. Yes. 18 Q. All right. So now my -- is this the 19 first time you've fully read this email? 20 A. I don't recall whether I fully read it 21 back in March of 2020, but when I found it when I 22 was searching my emails this week at Dr. -- at 23 Mr. Kelly's requested, I didn't read it through 24 completely until now. I just forwarded it to 25 him.</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Okay. I'll now share with you another 2 document that was produced to us this morning 3 which we'll mark as Exhibit 10. 4 (Deposition Exhibit 10, March 2020 email 5 string, was marked for purposes of 6 identification.) 7 Q. If you want to read through it and then 8 I'll ask questions about it. And tell me if you 9 need me to scroll through it so you can read it. 10 A. Can you scroll up a tiny bit. 11 Q. Sure. Is that good enough? Do you want 12 more? 13 A. Scroll up. 14 Q. Oh, up. 15 A. I want to see, I want to see -- okay. 16 Okay. Keep going. 17 Q. You want me to continue scrolling? 18 A. Yes. Please continue scrolling. 19 Okay. You can continue scrolling. 20 Okay. You can scroll down further. 21 Okay. You can scroll down. 22 Keep going. 23 You can go up a little bit, like two or 24 three lines. 25 Q. There? Is that enough?</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. All right. And you -- I take it, given 2 your responses to us for the last several hours, 3 you took those steps to further investigate the 4 information that's contained in either Exhibit 9 5 or 10? 6 A. Nothing that I recall. I didn't reply 7 and I don't recall any actions I may have taken 8 in response to this email. 9 MS. GIFFEN: All right. This we'll mark 10 as -- nope. That's the wrong one. This we'll 11 mark as Warne Exhibit 11, if you want to read 12 through that. 13 (Deposition Exhibit 11, Email, was 14 marked for purposes of identification.) 15 A. Yes, I recall this email. Yes, I've 16 read what's on the screen. 17 Q. Okay. And you have -- this is after you 18 saw the Lasker paper, right? 19 A. Yes. 20 MR. KELLY: Respectfully, no. I believe 21 that's incorrect, but... 22 MS. GIFFEN: But you're -- I don't 23 believe you're testifying, Mr. Kelly. 24 MR. KELLY: No, no, I know. But I think 25 it misstates the record, but...</p>

<p style="text-align: right;">Page 94</p> <p>1 MS. GIFFEN: Okay.</p> <p>2 A. Can you scroll down, look at the earlier</p> <p>3 emails?</p> <p>4 Q. Sure.</p> <p>5 A. Scroll up a little bit.</p> <p>6 Q. Scroll up?</p> <p>7 A. Down a little bit. A little bit more.</p> <p>8 I want to see the first email right here.</p> <p>9 So it looks like it was January 12th</p> <p>10 Dr. Fuerst sends me the message. And then what's</p> <p>11 the date of the reply at the top of the document?</p> <p>12 MR. KELLY: Do you want him to review</p> <p>13 the email first before the witness starts</p> <p>14 testifying?</p> <p>15 MS. GIFFEN: Sure. I've been very good</p> <p>16 at letting him read whatever he wants to read.</p> <p>17 Q. Would you like me to start at the very</p> <p>18 end, Dr. Warne?</p> <p>19 A. Yeah. Let's start at the earliest</p> <p>20 email.</p> <p>21 Q. Okay. All right. That's the end, I</p> <p>22 think.</p> <p>23 A. Scroll up.</p> <p>24 Keep going.</p> <p>25 Can you go to the top of this message.</p>	<p style="text-align: right;">Page 96</p> <p>1 would type them into a computer, it would give us</p> <p>2 a better idea of what admixture study or what</p> <p>3 paper Dr. Warne's addressing here.</p> <p>4 MS. GIFFEN: I want to see what the</p> <p>5 witness can do with what we have.</p> <p>6 Q. Are you finished with this email?</p> <p>7 A. Yes, I'm finished with this section.</p> <p>8 Q. Okay.</p> <p>9 MR. KELLY: So...</p> <p>10 A. And then go up a little bit more. I</p> <p>11 believe, I believe -- yeah, this is, this is --</p> <p>12 I've read everything from here.</p> <p>13 Q. Okay. All right. So what did this</p> <p>14 email thread -- what was being described here?</p> <p>15 It's happening in January of 2019 was the last</p> <p>16 one, but there was a 2018 -- August of 2018 in</p> <p>17 there. What's this all about, as you recall?</p> <p>18 MR. KELLY: Object to the form of the</p> <p>19 question.</p> <p>20 Q. Go ahead, Dr. Warne.</p> <p>21 A. It starts off with asking about test</p> <p>22 norms for the Raven's Progressive Matrices. I</p> <p>23 don't understand why that got tacked onto a later</p> <p>24 thread about the special issue of Psych and the</p> <p>25 solicitation of calls for papers there.</p>
<p style="text-align: right;">Page 95</p> <p>1 Will you please scroll down.</p> <p>2 Keep going down.</p> <p>3 Okay. All right. What's the next email</p> <p>4 in this chain?</p> <p>5 Q. That's where it ends.</p> <p>6 A. Yeah. I want to see the beginning of</p> <p>7 this one.</p> <p>8 Q. And I'm not sure if that's an</p> <p>9 embedded...</p> <p>10 A. Yeah. Let me, let me read from here</p> <p>11 down to that ending point you pointed out.</p> <p>12 Q. Okay. All right.</p> <p>13 A. Keep scrolling down.</p> <p>14 Keep going down.</p> <p>15 Keep going down.</p> <p>16 Okay. That's the end of that one.</p> <p>17 Q. Okay. You want to go the next one up?</p> <p>18 A. Yeah, the next one up. That one seems</p> <p>19 to be the first one that I was part of.</p> <p>20 Q. It does seem November 25th, 2018.</p> <p>21 A. Yeah. What's the -- I want to see the</p> <p>22 reply.</p> <p>23 MR. KELLY: Respectfully, I think, I</p> <p>24 think if we could use one of the links in here to</p> <p>25 see what papers they're referencing where you</p>	<p style="text-align: right;">Page 97</p> <p>1 Apparently, the editors of that special</p> <p>2 issue reached out to me asking me if I would</p> <p>3 submit anything. You can't submit the same</p> <p>4 manuscript to two different journals at the same</p> <p>5 time, so I said I can't; my paper's already</p> <p>6 somewhere else.</p> <p>7 And then the conversation picks up when</p> <p>8 the Lasker, et al., paper's been published, and</p> <p>9 then I respond after I read it saying that it's</p> <p>10 good work.</p> <p>11 Q. Okay. And this email, the one in</p> <p>12 January of 2019, is to John Fuerst but cc'd to</p> <p>13 Emil Kirkegaard, right?</p> <p>14 A. Yes.</p> <p>15 Q. Is this, by the way, the special issue</p> <p>16 of Psych for which Dr. Pesta was removed from the</p> <p>17 journal? Is that the same event?</p> <p>18 A. I believe so, but I'm not 100 percent</p> <p>19 sure about that.</p> <p>20 Q. Okay. All right. One more. Here is</p> <p>21 what we'll mark as Warne Exhibit 12.</p> <p>22 (Deposition Exhibit 12, Email string,</p> <p>23 was marked for purposes of</p> <p>24 identification.)</p> <p>25 Q. And it's another email trail. The top</p>

<p style="text-align: right;">Page 98</p> <p>1 one is dated July 20th, 2020. How would you like</p> <p>2 me to -- do you want me to scroll through it?</p> <p>3 A. I did read through this one --</p> <p>4 Q. Okay.</p> <p>5 A. -- lately, and so there's no need for me</p> <p>6 to scroll through and re-read it.</p> <p>7 Q. Okay. All right. And what was this</p> <p>8 trail about?</p> <p>9 A. I believe it culminates with me saying,</p> <p>10 hey, I'm not going to coauthor with the team,</p> <p>11 which I guess included Dr. Pesta. I don't have a</p> <p>12 lot of recollection around this, but I know it is</p> <p>13 associated with that video call in early 2020</p> <p>14 that I had, which is the only non-email</p> <p>15 interaction I've had with Dr. Pesta.</p> <p>16 And so apparently -- and, again, this is</p> <p>17 based mostly off what you see in front of you. I</p> <p>18 don't recall. I was temporarily a coauthor on</p> <p>19 the manuscript, and then I asked for my name to</p> <p>20 be taken off.</p> <p>21 Q. Yes.</p> <p>22 If you go down to the -- in the email</p> <p>23 thread, that's when you request to be removed and</p> <p>24 John Fuerst says okay, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. KELLY: Object to the form of the</p> <p>2 question.</p> <p>3 A. I don't recall what the, what the</p> <p>4 manuscript's about. I didn't re-read it in</p> <p>5 preparation for this, which is a sign that I</p> <p>6 didn't deserve coauthorship because, you know,</p> <p>7 years later, I can't remember doing anything for</p> <p>8 the study. I must not have done anything worthy</p> <p>9 of coauthorship, so I can't say what the analysis</p> <p>10 is treating.</p> <p>11 Q. I'm going to scroll down to the very end</p> <p>12 of the document, one of the earliest emails.</p> <p>13 This appears, to me anyway, to be an email from</p> <p>14 John Fuerst to you dated June 4th. I'm terribly</p> <p>15 sorry. Apparently, this was an email -- yeah,</p> <p>16 I'm sorry. I had it right the first time around.</p> <p>17 And it's referencing that he had</p> <p>18 received an email from Dr. Pesta that he asked</p> <p>19 John Fuerst to respond to, right?</p> <p>20 A. It seems so.</p> <p>21 Q. Okay. In the third paragraph down, he</p> <p>22 says: My reason is practical. Both you and</p> <p>23 Bryan were identifiable to reviewers in the paper</p> <p>24 by virtue of the statement of data access. I</p> <p>25 don't wish them to suspect something amiss as</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. Okay. Do you have any other</p> <p>2 recollections about that attempted coauthorship</p> <p>3 other than what's contained in Exhibit 12?</p> <p>4 A. No. Again, this is something that</p> <p>5 sometimes happens. You coauthor with someone,</p> <p>6 and by the time the manuscript gets done, you</p> <p>7 look at the finished product and you say, I</p> <p>8 probably don't deserve coauthorship on this.</p> <p>9 I do remember that at the time -- this</p> <p>10 was in the early summer of 2020 when the normal</p> <p>11 level of controversy about issues of race was</p> <p>12 heightened to the highest level I've seen in my</p> <p>13 lifetime. And I do know that I -- one of the</p> <p>14 reasons, in addition to not feeling like I did</p> <p>15 enough for coauthorship, was that I was worried</p> <p>16 about, about blow-back.</p> <p>17 That's the only thing special I remember</p> <p>18 about this compared to other times I've told</p> <p>19 colleagues, hey, good work. I don't warrant -- I</p> <p>20 don't deserve coauthorship.</p> <p>21 Q. Okay. This seems to -- the email trail</p> <p>22 seems to suggest that the paper that they were</p> <p>23 proposing that you be a coauthor on was an</p> <p>24 analysis of the eGaP [sic] data, the controlled</p> <p>25 access data, dataset, right?</p>	<p style="text-align: right;">Page 101</p> <p>1 they might if we changed that, and also deleted</p> <p>2 the IRB approval sentence. Moreover, I am of the</p> <p>3 opinion that Professor Haier, H-A-I-E-R, gave us</p> <p>4 a chance to reply, in part, because we had, as a</p> <p>5 coauthor, an intelligence board member. I don't</p> <p>6 wish to give him reason to change his mind. I</p> <p>7 spent an incredible amount of time and effort and</p> <p>8 a substantial amount of money on this. I am not</p> <p>9 going to risk this slight opportunity over your</p> <p>10 qualms.</p> <p>11 That was John Fuerst's response to your</p> <p>12 request to not be an author on the paper?</p> <p>13 MR. KELLY: Object to the form of the</p> <p>14 question.</p> <p>15 A. It appears so. I had forgotten about</p> <p>16 this email until I searched and found it this</p> <p>17 week.</p> <p>18 Q. And he goes on to say: As with you, I</p> <p>19 believe we are in the right to do, to do this</p> <p>20 because you agreed to be a coauthor on this paper</p> <p>21 numerous times over the past year. Moreover,</p> <p>22 there was no violation of research ethics in</p> <p>23 either letter or spirit in context to this</p> <p>24 specific paper, as it is not true that you had,</p> <p>25 quote, no hand in the creation, execution, or</p>

<p style="text-align: right;">Page 102</p> <p>1 write-up of the study, end quote, and that you, 2 that you were, quote, a front to gain access to 3 the data. End quote. So that is not a sound 4 excuse. 5 What is he referring to there? 6 A. I don't know specifically, but I 7 disagree with his, his statements. I disagree 8 with almost that entire paragraph. 9 I don't recall having any substantial 10 contribution to the manuscript. I don't even 11 remember what the manuscript was about. 12 Q. Were you on the Board of Intelligence at 13 this time? 14 A. I believe so. I would have to check 15 with my vitae to be 100 percent sure. 16 Q. Yeah. 17 But as far as you can recall, you were 18 not involved in this -- either the data access 19 request at all or anything to do with the 20 analysis in the paper; is that right? 21 MR. KELLY: Object to the form of the 22 question. Be careful with this one, Dr. Warne. 23 A. There's a lot I don't recall about, 24 about, about this. I've told you everything I 25 remember about accessing the dbGaP data, and I've</p>	<p style="text-align: right;">Page 104</p> <p>1 submitted in Intelligence, correct? 2 A. Yes. 3 Q. And you state here that there are two 4 reasons for that, one was personal and the other 5 we'll get to in one second. 6 So the personal one, I thought you had 7 said it was about your family situation, but at 8 least here you're describing your concern that 9 what you would be doing would violate the data 10 use agreements with the NIH, aren't you? 11 A. Both of those things can be true. 12 Q. And you were concerned about the -- what 13 the NIH would do about that because you had real 14 concern that you were being used as a front; 15 isn't that right? 16 MR. KELLY: Object to the form of the 17 question. 18 Q. Go ahead, Dr. Warne. 19 A. That is the word I used in the email. 20 Q. And it was a front to gain access to the 21 data, right? That's what you were worried about? 22 A. That is the phrase that I used in the 23 email. 24 Q. Okay. And then you go on to describe 25 that more fully. And then in the next paragraph,</p>
<p style="text-align: right;">Page 103</p> <p>1 told you everything I remember about this email 2 exchange and this, this manuscript that it refers 3 to. 4 MS. GIFFEN: All right. I want to take 5 about a five-minute break. And we're very close 6 to being done. 7 (A recess was taken.) 8 BY MS. GIFFEN: 9 Q. I want to just go back to Exhibit 12 10 again quickly, Dr. Warne. 11 And, as I understand it, now, we looked 12 in Exhibit 10, that on March 20th of 2020, you 13 did receive from Dr. Pesta some of the 14 correspondence he had with, with NIH, right? 15 THE REPORTER: You're on mute. 16 A. That's correct. 17 Q. And then there is this correspondence 18 that we just are looking at in Exhibit 12 which 19 is happening in June of 2020, right? 20 A. Yes. 21 Q. And the very first email in this trail, 22 it's from you to Bryan dated June 4th. And I 23 just want to ask a couple of questions about it. 24 This is where you've requested that your 25 name be taken off the article that was to be</p>	<p style="text-align: right;">Page 105</p> <p>1 you say that the second reason is -- that you 2 were worried was because that hereditarian 3 research might be adversely impacted if there was 4 an ethical lapse in regard to how data was 5 obtained, right? 6 A. That's correct. 7 Q. And those are the only reasons you set 8 forth in this email of June 4th, 2020, correct? 9 A. In the initial email, yes. 10 Q. And then first response -- disagreeing 11 with you, right -- about whether you were or were 12 not a participant, right? 13 A. You'll have to scroll up. I'm still 14 seeing the original email. 15 Q. Oh, I'm sorry. Where do you want me to 16 go? 17 MR. KELLY: Object to the form of the 18 question. 19 He lists more than those two reasons in 20 the email itself that you just referred to, 21 Ms. Giffen. 22 MS. GIFFEN: Mr. Kelly, you're not 23 testifying. 24 MR. KELLY: I'm objecting to your 25 questions.</p>

<p style="text-align: right;">Page 106</p> <p>1 MS. GIFFEN: That's testimony, 2 Mr. Kelly. 3 MR. KELLY: Respectfully -- 4 MS. GIFFEN: The documents -- the 5 document is there. 6 MR. KELLY: It speaks for itself. 7 BY MS. GIFFEN: 8 Q. All right. Dr. Warne, where did you 9 want me to go with this? 10 A. Scroll up a little bit to Fuerst's 11 response. 12 Q. Okay. Where -- would you tell me how 13 far you want me to go. 14 A. Right here is fine. 15 Yes, this does look like his response. 16 He disagrees that I had no hand in the creation, 17 execution, or write-up of the study. He 18 disagrees with the statement that I was a front. 19 As I stated earlier to you, I disagree 20 with his characteristic -- characterization of 21 the situation in this paragraph. 22 Q. Okay. And, obviously, your name was 23 taken off the paper at some point, correct? 24 A. Eventually. 25 Q. Uh-huh.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. All right. Just so I'm clear, that once 2 you received the information from Dr. Pesta in 3 March of 2020 of his correspondence with NIH, you 4 did not take any steps to further inquire about 5 the circumstances of that correspondence, 6 correct? 7 A. I don't remember. 8 Q. As you sit here today, you can't recall 9 doing anything more, right? 10 A. I don't recall doing anything more. 11 Q. Okay. Have you ever been charged with 12 engaging in research misconduct? 13 A. No. 14 Q. And do you know Emil Kirkegaard? 15 A. Yes. 16 Q. How do you know Emil Kirkegaard? 17 A. He is a member of the intelligence 18 research community. I've corresponded with him 19 quite a bit over the years; seen him a couple 20 times at conferences. 21 Q. Have you ever coauthored any -- anything 22 with him? 23 A. No. 24 MS. GIFFEN: Okay. I don't think 25 there's anything more. Hold on one second. I'll</p>
<p style="text-align: right;">Page 107</p> <p>1 You did, however, subsequently act with 2 Dr. -- or with John Fuerst in subsequent 3 articles, right? I think we went, we went over 4 that earlier. 5 MR. KELLY: Object to the form of the 6 question. Mischaracterizes the testimony. 7 Go ahead and answer. 8 A. Just that one response published on 9 that, that website, that 500-word response. 10 Q. Okay. All right. The other was the, 11 the printing of your Mankind Quarterly article in 12 the -- in the book that he was a coeditor on. 13 That was the only other occasion, right? 14 A. That's not really working with someone's 15 scientific work. That's -- I asked him to 16 reprint. 17 Q. Understood. 18 THE REPORTER: "I asked him to reprint"? 19 THE WITNESS: To reprint the article, 20 yes. 21 THE REPORTER: Thank you. 22 A. That's no more collaborating with 23 someone than asking if someone can photocopy a 24 book is collaborating with them, with the author 25 of the book.</p>	<p style="text-align: right;">Page 109</p> <p>1 be right back. 2 Q. All right, Dr. Warne. One more 3 question. 4 Are Emil Kirkegaard and John Fuerst 5 among a group of people, as you described 6 earlier, who review one another's works that you 7 have objections to in the peer review process? 8 MR. KELLY: Objection to the form of the 9 question. 10 A. I'm not aware of a peer review ring that 11 they've set up. What I referred to earlier is 12 what they call peer review rings, where there is 13 a formal group among colleagues; let's review 14 each other's stuff; oh, I'm submitting to this 15 journal. 16 I'm not aware of anything like that. 17 It's possible that, unbeknownst to one another, 18 they may have reviewed one another's stuff, but 19 I'm not aware that there's a peer review ring 20 going on there. And if there were, I would be 21 vocal about it, needing to shut it down. 22 MS. GIFFEN: Okay. All right. I have 23 no further questions at this time. I will say I 24 don't want to close the deposition, only because 25 we have some outstanding discovery disputes with</p>

<p style="text-align: right;">Page 110</p> <p>1 regard to the production of the subpoena. I have</p> <p>2 no idea if we'll ever assert those, Mr. Kelly, so</p> <p>3 I don't think it's useful to continue at this</p> <p>4 point.</p> <p>5 MR. KELLY: That sounds like you're</p> <p>6 closing it but you're not closing it.</p> <p>7 MS. GIFFEN: That's right.</p> <p>8 MR. KELLY: That's definitely a lawyer's</p> <p>9 answer, Ms. Giffen.</p> <p>10 I'm going to give you the lawyer's</p> <p>11 answer that it is closed, but we can disagree on</p> <p>12 that later.</p> <p>13 MS. GIFFEN: All right.</p> <p>14 MR. KELLY: And I'm sure we will.</p> <p>15 MS. GIFFEN: All right. And, Kristin, I</p> <p>16 will send you the exhibits.</p> <p>17 Thank you very much for your time,</p> <p>18 Dr. Warne.</p> <p>19 MR. KELLY: You have to read and sign, I</p> <p>20 believe, right?</p> <p>21 MS. GIFFEN: Yeah. True.</p> <p>22 (Signature is not waived.)</p> <p>23 (Deposition adjourned at 2:02 p.m.)</p> <p>24 -----</p> <p>25</p>	<p style="text-align: right;">Page 112</p> <p>1 Veritext Legal Solutions</p> <p>2 1100 Superior Ave</p> <p>3 Suite 1820</p> <p>4 Cleveland, Ohio 44114</p> <p>5 Phone: 216-523-1313</p> <p>6 July 3, 2024</p> <p>7 To: Frederick C. Kelly, Esq.</p> <p>8 Case Name: Pesta, Bryan J. v. Bloomberg, Laura Et Al.</p> <p>9 Veritext Reference Number: 6763702</p> <p>10 Witness: Russell T. Warne , Ph.D. Deposition Date: 6/19/2024</p> <p>11 Dear Sir/Madam:</p> <p>12 The deposition transcript taken in the above-referenced</p> <p>13 matter, with the reading and signing having not been</p> <p>14 expressly waived, has been completed and is available</p> <p>15 for review and signature. Please call our office to</p> <p>16 make arrangements for a convenient location to</p> <p>17 accomplish this or if you prefer a certified transcript</p> <p>18 can be purchased.</p> <p>19 If the errata is not returned within thirty days of your</p> <p>20 receipt of this letter, the reading and signing will be</p> <p>21 deemed waived.</p> <p>22 Sincerely,</p> <p>23 Production Department</p> <p>24</p> <p>25 NO NOTARY REQUIRED IN CA</p>
<p style="text-align: right;">Page 111</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 The State of Ohio,)</p> <p>4) SS:</p> <p>5 County of Cuyahoga.)</p> <p>6</p> <p>7 I, Kristin Wegryn, a Notary Public</p> <p>8 within and for the State of Ohio, duly</p> <p>9 commissioned and qualified, do hereby certify</p> <p>10 that the within-named witness, RUSSELL T. WARNE,</p> <p>11 Ph.D., was by me first duly sworn to testify the</p> <p>12 truth, the whole truth, and nothing but the truth</p> <p>13 in the cause aforesaid; that the testimony then</p> <p>14 given by the above-referenced witness was by me</p> <p>15 reduced to stenotypy in the presence of said</p> <p>16 witness; afterwards transcribed, and that the</p> <p>17 foregoing is a true and correct transcription of</p> <p>18 the testimony so given by the above-referenced</p> <p>19 witness.</p> <p>20 I do further certify that this</p> <p>21 deposition was taken remotely at the time and</p> <p>22 place in the foregoing caption specified and was</p> <p>23 completed without adjournment. I do further</p> <p>24 certify that I am not a relative, counsel, or</p> <p>25 attorney for either party, or otherwise</p> <p>interested in the event of this action.</p> <p>IN WITNESS WHEREOF, I have hereunto set</p> <p>my hand and affixed my seal of office at</p> <p>Cleveland, Ohio, on this 3rd day of July 2024.</p> <p></p> <p>Kristin Wegryn, RMR, CRR</p> <p>Notary Public State of Ohio</p> <p>Commission expiration: July 23, 2028</p>	<p style="text-align: right;">Page 113</p> <p>1 DEPOSITION REVIEW</p> <p>2 CERTIFICATION OF WITNESS</p> <p>3 ASSIGNMENT REFERENCE NO: 6763702</p> <p>4 CASE NAME: Pesta, Bryan J. v. Bloomberg, Laura Et Al.</p> <p>5 DATE OF DEPOSITION: 6/19/2024</p> <p>6 WITNESS' NAME: Russell T. Warne , Ph.D.</p> <p>7 In accordance with the Rules of Civil</p> <p>8 Procedure, I have read the entire transcript of</p> <p>9 my testimony or it has been read to me.</p> <p>10 I have made no changes to the testimony</p> <p>11 as transcribed by the court reporter.</p> <p>12</p> <p>13 Date Russell T. Warne , Ph.D.</p> <p>14 Sworn to and subscribed before me, a</p> <p>15 Notary Public in and for the State and County,</p> <p>16 the referenced witness did personally appear</p> <p>17 and acknowledge that:</p> <p>18 They have read the transcript;</p> <p>19 They signed the foregoing Sworn</p> <p>20 Statement; and</p> <p>21 Their execution of this Statement is of</p> <p>22 their free act and deed.</p> <p>23 I have affixed my name and official seal</p> <p>24 this _____ day of _____, 20____.</p> <p>25</p> <p>Notary Public</p> <p>Commission Expiration Date</p>

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1 DEPOSITION REVIEW
CERTIFICATION OF WITNESS

2

3 ASSIGNMENT REFERENCE NO: 6763702
CASE NAME: Pesta, Bryan J. v. Bloomberg, Laura Et Al.
DATE OF DEPOSITION: 6/19/2024
WITNESS' NAME: Russell T. Warne , Ph.D.

5 In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
6 my testimony or it has been read to me.
7 I have listed my changes on the attached
Errata Sheet, listing page and line numbers as
8 well as the reason(s) for the change(s).
9 I request that these changes be entered
as part of the record of my testimony.

10

11 I have executed the Errata Sheet, as well
as this Certificate, and request and authorize
that both be appended to the transcript of my
12 testimony and be incorporated therein.

13 _____
Date Russell T. Warne , Ph.D.

14

15 Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
16 and acknowledge that:
17 They have read the transcript;
They have listed all of their corrections
18 in the appended Errata Sheet;
They signed the foregoing Sworn
19 Statement; and
Their execution of this Statement is of
20 their free act and deed.
21 I have affixed my name and official seal
22 this _____ day of _____, 20____.
23 _____
Notary Public

24

25 _____
Commission Expiration Date

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1 ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST

2 ASSIGNMENT NO: 6/19/2024

3 PAGE/LINE(S) / CHANGE /REASON

4 _____
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10 _____
11 _____
12 _____
13 _____
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19 _____

20 _____
Date Russell T. Warne , Ph.D.

21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
22 DAY OF _____, 20____ .
23 _____
Notary Public

24

25 _____
Commission Expiration Date

30 (Pages 114 - 115)

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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